

The 30(b)(6) Deposition of  
**ENCORE, INC. - Day 2**

Through  
**EVAN MONHEISER**

In the Matter of  
**EAUX HOLDINGS, LLC**  
versus  
**SCOTTSDALE INSURANCE CO.**

Taken On  
**AUGUST 06, 2021**



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAKE CHARLES DIVISION

EAUX HOLDINGS, LLC

VERSUS

CIVIL CASE NO. 2:20-CV-01582  
JUDGE: JAMES CAIN  
MAG: KATHLEEN KAY

SCOTTSDALE INSURANCE CO.

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VIDEOTAPED 30(b)6 DEPOSITION OF  
ENCORE, INC., BY REPRESENTATIVE EVAN MONHEISER

(CONTINUATION - DAY 2 OF 2)

The continuation of the videotaped 30(b)6 deposition of ENCORE, INC., BY REPRESENTATIVE EVAN MONHEISER appearing remotely via videoconference from Lake Charles, Louisiana was taken in the above entitled cause, pursuant to the following stipulation, before Deborah Villien, Certified Court Reporter, appearing remotely from Lafayette, Louisiana, on the 6th day of August 2021, beginning at 9:08 a.m.

REMOTE APPEARANCES

FOR THE PLAINTIFFS: EAUX HOLDINGS, LLC

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ALSO PRESENT:

MR. CHARLIE QUIROZ, VIDEOGRAPHER

MR. GRANGER STUCK

I-N-D-E-X

EXAMINATION CONTINUING FROM AUGUST 5, 2021:

BY MS. WOLF (Continued) .....5  
BY MR. COX .....195  
BY MS. WOLF (Continued) .....228

EXHIBITS:

EXHIBIT 2 (STATE LICENSING BOARD LETTER .....190  
AUGUST 6, 2021)  
EXHIBIT ENCORE P-1(ILLUSTRATION) .....211

S-T-I-P-U-L-A-T-I-O-N

It is stipulated that the continuation of the videotaped 30(b)6 deposition of ENCORE, INC., BY REPRESENTATIVE EVAN MONHEISER via videoconference is taken on the 6th day of August 2021, before Deborah Henderson Villien, Certified Court Reporter.

The deposition is being taken pursuant to notice and the Federal Rules of Civil Procedure.

The parties hereto waive all formalities in connection with the taking of said deposition, except the swearing of the witness, and the reduction of the questions and answers to typewriting.

Before the completion of the deposition, the deponent and/or a party did not request to review the transcript.

1 REPORTED REMOTELY FROM LAFAYETTE, LOUISIANA

2 (DEPOSITION RESUMED - DAY 2 OF 2)

3 Friday, August 06, 2021 9:42 AM

4 THE VIDEOGRAPHER: We are now on the  
5 record. This deposition is a continuation  
6 of August 5. Today is August 6, 2021, and  
7 the time 9:42 a.m.

8 EVAN MONHEISER, called as a witness at the instance  
9 of the defendants, after having been duly sworn on  
10 August 5, 2021, continued examination and testimony  
11 as follows:

12 CONTINUATION OF EXAMINATION

13 BY MS. WOLF:

14 Q. Good morning, Mr. Monheiser. Would you  
15 turn to the Tab M in the binder that I provided, and  
16 let's go --

17 THE WITNESS: I'm sorry. Do I say  
18 continue?

19 MR. COX: Yeah, hit continue.

20 THE WITNESS: Sorry.

21 MS. WOLF: That's fine.

22 BY MS. WOLF:

23 Q. Go to tab M1. What I'm going to do is go  
24 through Encore's invoices and payment.

25 A. Okay.

1 Q. So if you're at Tab 1, you should see  
2 Encore 60; is that what you have?

3 A. Yes, ma'am.

4 Q. All right. And this is Encore's first  
5 invoice, correct?

6 A. Yes.

7 Q. And it's dated October 28, 2020, correct?

8 A. Yes, ma'am.

9 Q. This is before Encore had obtained its  
10 Louisiana license, right?

11 A. Yes, ma'am.

12 Q. And this work, if you look down in the  
13 description of work, is for submittals, project  
14 management, mobilization, mitigation, and  
15 engineering, correct?

16 A. Yes, ma'am.

17 Q. And the amount is 24,927.50; is that  
18 right?

19 A. Yes, ma'am.

20 Q. And so at this point, you had gotten the  
21 go-ahead from the owner for this work, right, and  
22 actually performed the work, correct?

23 A. Yes.

24 Q. Is this amount, the almost 25,000, is  
25 that included in the \$1.36 million contract sum?

1           A.       Some of this is. The other would be a  
2 change order. I think 9, item 4 would be the change  
3 order from Hurricane Delta.

4           Q.       Okay. Are you saying -- oh, some of this  
5 is Hurricane Delta change order?

6           A.       Just the mitigation portion.

7           Q.       Mitigation. Okay. And the rest of it  
8 was included in the \$1.36 million contract sum?

9           A.       I think so.

10          Q.       Did all of this -- other than the  
11 Hurricane Delta, is all of this within the insurance  
12 scope for this project for the Hurricane Laura  
13 project, or do you know?

14          A.       I'm not 100 percent sure. This, I think,  
15 was just a basic -- just based off, like, a three  
16 month deal. And so we probably put some numbers in  
17 there. But, yeah, I mean it's -- I'm not  
18 100 percent sure if they meet up exactly.

19          Q.       All right. And this -- the owner paid  
20 this amount, right? If you look at Tab number 8,  
21 Encore 61, there is a check in there for this  
22 amount. So this was paid on November 4, correct?

23          A.       Yes, ma'am.

24          Q.       All right. Let's move on to Tab 2, which  
25 is invoice number 2. Are you there?



1 A. Yep.

2 Q. That's Encore 62. This is invoice  
3 number 2 in the amount of \$100,000 correct?

4 A. You mean Encore 64?

5 Q. It should be Encore 62 is the invoice.  
6 Do you have 62? It should be under Tab number 2.

7 A. I just have a payout that says Encore  
8 0064.

9 Q. All right. Let me see if perhaps I can  
10 pull this up for us. Okay. I have it opened on my  
11 screen, so I will do a screen share, since it's not  
12 in your binder. Can you see Encore 62 on my screen?

13 A. Yes.

14 Q. This is -- it's dated --

15 A. That's a statement. That's a billing  
16 statement.

17 Q. Okay. I was going by this right here  
18 where it says invoice 995-02, 100,000 --

19 A. Yes.

20 Q. -- so a billing statement or an invoice,  
21 same thing, right?

22 A. Yes.

23 Q. And it's dated December 24, 2020; is that  
24 right?

25 A. Correct.

1 Q. And this is -- this correlates to that  
2 initial payment that was called for in your contract  
3 with the owner. Do you recall that from yesterday,  
4 that we looked at the payment schedule and the  
5 contract, and it called for \$100,000 initial  
6 payment?

7 A. Yes.

8 Q. And that's what this is, correct?

9 A. Yes.

10 Q. All right. Let's look at -- I believe  
11 you said that you do have in your notebook Encore  
12 64-64.02 which is the pay application, right?

13 A. Yes.

14 Q. So that pay application goes along with  
15 invoice number 2, right? It's also dated  
16 December 24, and it shows an amount owed of  
17 \$100,000. Right?

18 A. Correct.

19 Q. Okay. So at this point -- and again, I'm  
20 looking at Encore 64, the first page of your pay  
21 application. It shows the original contract sum of  
22 \$1.36 million, right?

23 A. Correct.

24 Q. I'm reading item one, original contract  
25 sum. And then item two for \$6,340 is change order

1 number 1 for Hurricane Delta work. We looked at  
2 that yesterday. Do you recall?

3 A. Correct.

4 COURT REPORTER: I'm sorry, Ms. Mary  
5 Anne, the numbers cut out. Could you  
6 repeat that number for me, please?

7 MS. WOLF: Yes. \$6,340 for change  
8 order number 1, Hurricane Delta.

9 BY MS. WOLF:

10 Q. And Mr. Monheiser, you have confirmed  
11 that that's what that amount is for, right?

12 A. Correct.

13 Q. Okay. If you look at sheet 2, the  
14 continuation sheet of the payout. At the scheduled  
15 value, it doesn't show \$1.36 million, right, it  
16 shows \$561,802.49, correct?

17 A. Correct.

18 Q. But typically on a pay application, you  
19 would have outlined all the description of work, and  
20 the scheduled value would add up to the contract  
21 sum; is that right?

22 A. Yes.

23 Q. Why doesn't this -- why doesn't page 2 of  
24 the payout match page 1?

25 A. I'm not sure. Maybe just a common

1 mistake.

2 Q. You agree that the way it would typically  
3 work is all the scheduled values would be listed in  
4 column C, and would add up to the contract sum,  
5 correct?

6 A. Correct. But the invoice -- let me see  
7 here -- I mean, it says it on the front portion of  
8 it. We may have just left it off the back.

9 Q. So at this point what page 2 of the pay  
10 application is showing is a balance to finish of  
11 \$443,214.99. Do you see that in column H?

12 A. Yes. And that's for -- that's only for  
13 divisions 1 through 7.

14 Q. Okay. So we've established that page 2  
15 of the payout doesn't match page 1, because it  
16 doesn't account for the full contract value, right?

17 A. Correct.

18 Q. Okay. Do you -- does Encore do projects  
19 where a lender is involved, and the lender is  
20 reviewing pay applications?

21 A. Not that I'm aware of.

22 Q. Okay. And how about do you ever have a  
23 surety involved where your surety is reviewing pay  
24 applications?

25 A. Not that I'm aware of.

1 Q. Do you ever do projects where there is an  
2 architect or an engineer of record who reviews pay  
3 applications?

4 A. I'm sure we have, but I'm not -- I don't  
5 know when.

6 Q. Okay. And, in fact, page 1 of the pay  
7 application has a blank for the design professional  
8 of record to actually certify the payment; is that  
9 right?

10 A. Correct.

11 Q. But in this case, in this particular  
12 project, as you testify to yesterday, there was no  
13 design professional of record who was reviewing  
14 Encore's pay applications; is that correct?

15 A. Correct.

16 Q. And the only certification on here is  
17 your signature under contractor?

18 A. Correct.

19 Q. The owner paid the \$100,000, correct? We  
20 can -- if you want to look at Tab 8 at Encore 63,  
21 there's a check in there for \$100,000?

22 A. Yes.

23 Q. And that was paid on December 29, 2020,  
24 correct?

25 A. Yes.

1 Q. Do you recall ever submitting a pay  
2 application like this where page 2 doesn't match  
3 page 1, and having it rejected by any party who is  
4 reviewing it?

5 A. It's a common mistake. I mean, I  
6 don't -- I don't remember anything happening like  
7 that.

8 Q. Let's look at the next tab, which is  
9 Tab 3. You should have Encore 65 in there, which is  
10 invoice number 3.

11 A. I've got Encore 67.

12 Q. Pay application. If you turn --

13 A. I'm sorry, I got this. Yes. I've got  
14 this, it's the next one.

15 Q. Okay. So you have Encore 65, and that is  
16 invoice number 3, correct?

17 A. Yes. It's a billing statement.

18 Q. Okay. And it's dated January 27, 2021,  
19 right?

20 A. Yes.

21 Q. And the amount is 250,000; is that right?  
22 \$250,000?

23 A. Yes.

24 Q. And that is -- that corresponds to the  
25 progress payment that we looked at yesterday from

1 Encore and the owner's contract; is that right?

2 A. Yes.

3 Q. And the owner paid that \$250,000 on  
4 February 3, if you look, please, at Tab 8. That  
5 should be Encore 66.

6 A. Yes.

7 Q. Let's look at the pay application, which  
8 is Encore 67 and 67.02. This is pay application  
9 number 3; is that right?

10 A. Yes.

11 Q. And it's dated January 27, 2021, correct?

12 A. Yes.

13 Q. You see it has a contract date of  
14 December 11; do you see that?

15 A. What was that?

16 Q. There's a -- under contract date, it says  
17 December 11, 2020. Do you see where I'm reading  
18 that up at the top, right?

19 A. Yes.

20 Q. Was there a contract that Encore entered  
21 into with the owner on --

22 A. No, that's -- again, I think that's just  
23 a common mistake. At this point, I was actually  
24 sending him pay apps and invoices as well, just in  
25 regular form upon his request. And those aren't in

1 here.

2 Q. So is --

3 A. They were in my folder that I turned  
4 over.

5 Q. What's not in there?

6 A. My invoices to him, the ones that he  
7 requested, they are of the same amounts, it's just  
8 not in the pay app.

9 Q. Okay. Is that we just looked at, Encore  
10 65?

11 A. No.

12 Q. Okay. So back to Encore 67, the pay  
13 application. Again, if you look at page 2 of the  
14 pay application, under column C, the scheduled  
15 value, what's shown here is a number, \$955,819.27.  
16 Correct?

17 A. Correct.

18 Q. And so that's not the full contract value  
19 that's shown on page 1 of the pay application,  
20 right?

21 A. Correct.

22 Q. And so that means that the balance to  
23 finish in column H of \$607 -- \$607,486.30 that  
24 number is not correct? That's not the balance to  
25 finish this project?



1 A. Correct. That's not the balance to  
2 finish the project.

3 Q. And what's your explanation for why  
4 page 2 of the pay application doesn't match page 1?

5 A. It just -- I think -- it looks like maybe  
6 we were just putting in at that point what we were  
7 working on, and not the full out estimated values.  
8 That's what it looks like.

9 Q. Okay. Let's look at Tab 4. And let's  
10 look at the invoice first, which is Encore 68, or  
11 the billing statement. Are you there?

12 A. Yep.

13 Q. All right. So it's dated March 22, 2021,  
14 correct?

15 A. Correct.

16 Q. And the amount on this invoice is  
17 \$315,000; is that right? That's the amount shown as  
18 the balance, and the amount that Encore is billing  
19 the owner for, right?

20 A. Correct.

21 Q. And if we look at Encore 71 and 71.02,  
22 that's the corresponding pay application, correct?  
23 It's got the same date on it?

24 A. Yes.

25 Q. And we talked about this yesterday, but

1 Encore is billing the owner another payment, even  
2 though, as we saw in the contract, Encore had not  
3 yet reached the point where it could request a final  
4 payment because the project wasn't completed, or  
5 accepted, and lien free, all the stuff we looked at  
6 yesterday in the contract?

7 A. Can you repeat the question?

8 Q. Yes. What I'm asking is. At this point  
9 Encore is submitting an invoice, a billing  
10 statement, to the owner for \$315,000. But this  
11 progress payment isn't called for in Encore's  
12 contract with the owner, correct?

13 A. It isn't called for, but it's also  
14 stating that we wouldn't submit another one.

15 Q. But at this point, Encore had not  
16 complied with the part of the contract under  
17 3.2.2 -- this is on Encore 55 and 55.02 -- the  
18 contract between Encore and the owner, Section 3.2.2  
19 final payment. Encore had not yet complied with the  
20 four items that I read through yesterday, final  
21 written approval, a lien release, turned over  
22 manufacturer warranties, and owners received payment  
23 for depreciation from the insurance company. Those  
24 four items at this point have not been fulfilled; is  
25 that correct?

1 A. Give me one second here.

2 Q. I'm sorry. I didn't hear you.

3 A. I'm sorry. Give me one second here.

4 Right. But I don't think that the --  
5 this isn't the final invoice, so it doesn't -- it's  
6 not relevant.

7 Q. Okay. I understand your position. But  
8 when this invoice was submitted, and this pay  
9 application on March 22, 2021, I am correct in  
10 saying that Encore had not yet complied with the  
11 provisions of 3.2.2 of its contract. That's a  
12 correct statement, right?

13 A. But we wouldn't comply because it's not  
14 the final invoice.

15 Q. I understand your explanation. But I  
16 just want to make -- I just need an answer for the  
17 record that I am --

18 A. That's my answer.

19 Q. So I think it's yes or no. At this point  
20 on March 22, 2021, had Encore fulfilled the  
21 requirements set out in 3.2.2 of its contract?

22 A. I have a question. Why would I comply  
23 with that, if this isn't the final invoice? It  
24 states that that's going to happen during the final  
25 invoice. This is not the final invoice. So why

1 would I have to comply with that?

2 Q. Okay. I understand your question, but at  
3 this point --

4 A. It's not a yes-or-no answer.

5 Q. On March 22, 2021, Encore had not, as you  
6 said, complied with 3.2.2, those four items on  
7 there?

8 A. Correct.

9 Q. Does Encore's schedule of values, looking  
10 at part B, description of work, does it include that  
11 \$50,000 contingency, or where is that in there?

12 A. It is actually in the schedule values,  
13 it's in each division.

14 Q. Meaning -- does that mean that the  
15 \$50,000 contingency is dispersed among the various  
16 items --

17 A. Correct.

18 Q. -- it's not one lump sum contingency  
19 \$50,000?

20 A. Yes. I mean, it's dispersed around  
21 through each division.

22 Q. Okay. All right. Let's move on to Tab 5  
23 and look at -- let's look at the invoice first,  
24 that's Encore 72. Do you have that?

25 A. Yes.

1 Q. All right. So Encore is billing the  
2 owner for, at this point, it is carrying over the  
3 \$315,000 plus there's an additional amount of  
4 \$375,102.42, correct?

5 A. Yes.

6 Q. Okay. And then there are two monthly  
7 interest payments in there, each totaling \$1890; is  
8 that right?

9 A. Yes.

10 Q. Why was Encore charging the owner  
11 interest?

12 A. Because he couldn't pay the invoice.

13 Q. The \$315,000 invoice?

14 A. Correct.

15 Q. Has the owner ever agreed to pay that  
16 interest?

17 A. Yes.

18 Q. Has it been paid?

19 A. Pardon?

20 Q. Has it been paid, the interest?

21 A. Depending on how you delegate the  
22 payments that he's paid us.

23 Q. The owner has agreed to pay you these two  
24 interest payments, each of \$1890?

25 A. Yes. It's a -- it was an agreement in

1 the contract.

2 Q. There was an agreement in the contract  
3 for interest on any amounts that were overdue,  
4 right?

5 A. Correct.

6 Q. Has the owner ever disputed that the  
7 interest was owed by saying that those payments were  
8 not overdue because they were not owed yet under the  
9 contract?

10 A. Can you repeat that question?

11 Q. Has the owner ever taken the position  
12 that it does not owe the interest because under the  
13 contract, Encore was not yet entitled to those  
14 payments, the 315,000?

15 A. Why wouldn't I be entitled to that  
16 315,000?

17 Q. I'm asking if the owner has ever taken  
18 that position or ever --

19 A. No, we have not.

20 Q. I'm sorry. We talked over the top of  
21 each other. So my question --

22 A. Sorry.

23 Q. I'm asking whether or not the owner has  
24 ever disputed the interest?

25 A. No.

1 Q. And is there more interest that was  
2 charged, or just these two monthly interest payments  
3 on the 315,000?

4 A. I think this -- just these two on that  
5 amount.

6 Q. That's the only interest that Encore has  
7 charged the owner, is these two monthly interest  
8 payments on the --

9 A. On that payment, on that \$315,000  
10 payment.

11 Q. Okay. Has -- are there more -- was there  
12 more interest charged to the owner for anything  
13 else?

14 A. Going to the next invoices, if he can't  
15 pay them.

16 Q. Okay. Well we'll look at those. All  
17 right. So if you look at Tab 8, there was a payment  
18 made on June 3, the owner paid \$550,000 right?  
19 That's Encore 70.

20 A. Correct.

21 Q. And that -- how have you applied that,  
22 does that cover 315,000?

23 A. Yes. It's covering the 315 and some of  
24 the previous -- or the next invoice that I sent in.

25 Q. And actually let me go back to Tab 5.

1 Because I don't think I talked about the pay  
2 application for that. Yeah. So that's Encore 74  
3 and 74.02; do you have that?

4 A. Yes.

5 Q. All right. If we look at the change  
6 order amount, now it's \$101,520 correct?

7 A. Correct.

8 Q. And that includes change order number 1  
9 that was the Hurricane Delta change order. And I  
10 believe change order number 4. If you remember,  
11 change order number 4 -- if you look on page 2 of  
12 your pay application, you'll see that was the VRF  
13 change order for phase one?

14 A. Correct.

15 Q. All right. So that sum is \$95,180 for  
16 change order number 4, correct?

17 A. Correct.

18 Q. And so those two things added together  
19 give you the change order number that's in item  
20 number 2, correct?

21 A. Correct.

22 Q. This one's not -- you haven't signed this  
23 one. Has this been submitted to the owner? Was it  
24 submitted on May 6, 2021?

25 A. I'm not sure. I'd have to find when I



1 sent this.

2 Q. Okay. So that payment that we looked at  
3 under Tab 8 that was \$550,000 on June 3, that would  
4 be for -- that would cover the \$315,000 invoice  
5 number 4, and part of invoice number 5 that was for  
6 \$375,102.42 correct?

7 A. Correct.

8 Q. Why hasn't the owner paid invoice  
9 number 5 in full?

10 A. I wouldn't know. You'd have to ask him  
11 that.

12 Q. Have you asked him?

13 A. We've had discussions about payments.

14 Q. So this invoice number 5 and pay  
15 application number 5, the one I'm looking at that's  
16 not signed, has a date of May 6. So between May 6  
17 and today, August 6, 3 months, how many  
18 conversations have you had with the owner, with Joey  
19 Odom, about payment of this invoice?

20 A. Maybe two times. I don't remember.

21 Q. What has he told you about the reason he  
22 hasn't paid invoice number 5?

23 A. I honestly do not remember. I think -- I  
24 can't remember the exact words that he used.

25 Q. Can you tell us in general what his

1 position is?

2 A. I have no idea. Again, I can't speak for  
3 him. I can tell you what he -- maybe, possibly in a  
4 abbreviated, that he didn't have funding for it.

5 Q. So Joey Odom told you -- what's the most  
6 recent time you talked to Joey Odom about payment of  
7 invoice number 5 or, in fact, payment for any of the  
8 other work that Encore has not yet been paid for?

9 A. Probably that conversation that him and I  
10 had about -- about the -- the splitting of the  
11 invoice.

12 Q. Splitting of which invoice?

13 A. Not splitting. Essentially to -- the  
14 check being cut for both of these, but him not being  
15 able to pay both of them.

16 Q. Have you talked to anybody, other than  
17 Joey Odom, about payment for Encore's invoices?

18 A. Not that I recall.

19 Q. Did you have any discussions with  
20 Skyline, or with Jeff Majors, about payment to  
21 Encore?

22 A. Not that I recall.

23 Q. Specifically have you had any  
24 conversations with Jeff Majors, or with Skyline,  
25 about when Encore will be paid the remainder that

1 it's owed for the work that it's done?

2 A. No.

3 Q. Did you have any conversations with  
4 anybody else, other than Joey Odom, about when  
5 Encore is going to receive payment?

6 A. I'm sure I have.

7 Q. Who would that be?

8 A. Maybe my boss, Aden. Yeah. Yeah, that's  
9 probably one of -- a couple of them. But again  
10 it's -- once that invoice was paid, just general  
11 conversations about when we would get paid next.

12 Q. All right. So in total, what I have as  
13 checks here is 550, 250,000 -- I'm sorry. 550,000,  
14 250,000, 100,000. That's 900,000. Plus there was  
15 that almost 25,000. So you've gotten a little over  
16 900,000. Does Encore consider it paid in full at  
17 this point?

18 A. No.

19 Q. Are you saying that Encore is entitled to  
20 the full 1.36 million?

21 A. Yes. We are entitled to the full  
22 1.36 million.

23 Q. And let's look at -- let's look at the  
24 next pay application, which is under Tab 6 --  
25 actually Tab 7. This is Encore 75 and 75.02; do you

1 have that?

2 A. Under Tab 7. I'm sorry. Yeah.

3 Q. This one is also numbered pay application  
4 number 5, and this one is signed. So if you would  
5 go back to Tab 5, that's Encore 74.

6 A. What's the date -- what is -- what is the  
7 label of my folder that this is in?

8 Q. The label of your folder?

9 A. Yes. Not the folder, but what's the --  
10 what's the -- the invoice number?

11 Q. I probably can pull that up, but let me  
12 ask my question first to make sure that you need it.  
13 I guess you are saying you need that in order to  
14 answer my question. So let me ask my question  
15 first.

16 Compare Encore 74 and Encore 75, all  
17 right, both of them are numbered pay application  
18 number 5, correct?

19 A. Yes.

20 Q. All right. Encore 74 is dated May 6,  
21 2021, correct?

22 A. May 6.

23 Q. I'm looking at the date where you signed  
24 it -- or actually the date filled in, but you didn't  
25 sign it.

1 A. Correct. 5/6.

2 Q. And then if you look at Encore 75, this  
3 one you did sign, and it's dated June 10, 2021,  
4 correct?

5 A. Correct.

6 Q. So is this a typo and this second one is  
7 supposed to be application number 6, or did this  
8 application number 5 that is signed take the place  
9 of the prior one? I'm just trying to figure out why  
10 there were two pay application number 5s?

11 A. I need to know the title of the document  
12 that I named it, and what folder it's in, if it's in  
13 the same pay application folder. Because I don't  
14 think I had even sent this one in. Typically  
15 sometimes when we are getting ready to submit an  
16 invoice, you know, we just copy and paste the folder  
17 and just rename the folder in our dropbox. And I  
18 will start the process. Sometimes I like to  
19 pre-make an invoice. So if this one -- I don't  
20 think this one was ever submitted. I was pre-making  
21 invoices.

22 Q. Are you saying Encore 74 in the amount of  
23 \$375,102.42 the one that's not signed, that was the  
24 one that may not have been submitted?

25 A. No, 75. Encore 75. That one -- that one

1 was probably a premade. That one looks like it's a  
2 premade invoice.

3 Q. Okay. So you --

4 A. I've never -- I've never submitted it.

5 Q. Okay. So back to Encore 74, that's the  
6 unsigned payout from May 6, that one -- you do  
7 believe you submitted that one for 375,000 plus?

8 A. I know I submitted that one.

9 Q. Okay. And then so back to Encore 75.

10 A. I got -- I mean, if you have this, you  
11 are leaving out documents here that are in my folder  
12 that I gave you guys.

13 Q. Did you bring your documents with you on  
14 your computer?

15 A. Yes. I've got -- I'm on another computer  
16 right now. This isn't -- this could be a copy and  
17 paste of a previous folder. And so, I mean, I  
18 haven't sent this invoice in yet.

19 Q. You're referring to Encore 75, the one --

20 A. Correct. Encore 75.

21 Q. Encore 75, the pay application that's  
22 dated June 10, 2021, and signed, in the amount of  
23 200,000 -- \$200,731.50 has not yet been submitted?

24 A. Correct.

25 Q. Why hasn't -- has this work been done,

1 the \$200,000 worth of work, has it been done?

2 A. Yeah, probably. Yeah, I would say all of  
3 it. Yeah.

4 Q. If the work's been done, and you are  
5 ready to certify this as work that's done, and was  
6 in fact done in June, why has Encore not submitted  
7 this invoice to the owner for payment?

8 A. I wouldn't -- I do not know.

9 Q. Who for Encore can answer the question as  
10 to why Encore has not submitted --

11 A. It would be me. You know, again,  
12 sometimes if I -- I haven't submitted this invoice.  
13 I submit all these invoices to Joey.

14 Q. Let me ask my question. I'm sorry. I  
15 hadn't formulated it yet. And then you can answer  
16 it, okay.

17 So I thought I understood that you said  
18 you didn't know why Encore had not yet submitted a  
19 \$200,000 plus invoice for work that's been done  
20 since June 10. Do you know why Encore has not yet  
21 submitted this invoice for payment, or this pay  
22 application?

23 A. We just -- I just haven't submitted it  
24 yet.

25 Q. Why?

1           A.     I have not submitted it yet. There's no,  
2 like -- I just haven't submitted it.

3           Q.     As contractor, have you paid these subs  
4 who did this work? Have you paid them yet?

5           A.     You have the checks that we have sent to  
6 subcontractors.

7           Q.     Do you know whether or not you have paid  
8 your subcontractors who did this \$200,000 worth of  
9 work?

10          A.     What was that?

11          Q.     Do you know, without looking at your  
12 documents, whether or not you are holding payment to  
13 these subcontractors who did this \$200,000 worth of  
14 work, or whether or not you have paid them? Do you  
15 know?

16          A.     Not off the top of my head. I have to  
17 look at my documents.

18          Q.     Do you have subcontractors asking you for  
19 payment right now for work done before June 10?

20          A.     I think I -- I think we have paid a  
21 majority of invoices. So nobody has asked me for  
22 anything. I've actually had to ask for them to  
23 invoice me for the work.

24          Q.     All right. Is this -- this Encore 75,  
25 which hasn't yet been submitted, this won't be the



1 final pay application, right, because there is still  
2 work remaining shown on here in column H, balance to  
3 finish of 195,758.58 correct?

4 A. Yes, correct.

5 Q. So Encore still has this pay application  
6 to submit to the owner, and then a final, or do you  
7 know if there's going to be other pay applications  
8 after this one goes out?

9 A. From -- we are -- I would say that I'm in  
10 the midst of working on the full out window  
11 estimate. So yes, I mean, I would want to -- there  
12 would be some additions or subtractions depending on  
13 the second floor tenant finish, if he selects to do  
14 so, or whenever the windows get put in.

15 Q. How much retainage is the owner entitled  
16 to hold out? What percentage?

17 A. I did not hear.

18 Q. It's in column I, right, column I is for  
19 the retainage on the pay app?

20 A. Retainage is number 5 on my pay app. Are  
21 you talking about on this side? Yes, it is in  
22 column I.

23 Q. Okay. And so from the payout, whether  
24 you're looking at page 1 or page 2, there is no  
25 retainage withheld; is that right?

1 A. Correct.

2 Q. So looking at -- I'll call it the  
3 June 10, 2021, pay application, there is a balance  
4 to finish of \$195,758.58 correct?

5 A. Which pay app was that?

6 Q. The one dated June 10, 2021, Encore 75.

7 A. Can you repeat that question, please?

8 Q. Yes. If you look at Encore 75, the pay  
9 application dated June 10, 2021, the balance to  
10 finish this project is \$195,758.50. Correct?  
11 That's in column H, balance to finish.

12 A. That's what it looks like, yes.

13 Q. So as of June 10, the remaining work was  
14 just under 200,000. And in that time from June 10  
15 to today, the last 2 months, what percentage of that  
16 \$200,000 remaining has Encore done?

17 A. I'm not 100 percent sure. I'd have to go  
18 over this to be able to answer that. I'm not  
19 100 percent sure. I know because there is work that  
20 hasn't been completed, and some of the window items  
21 as well. So additions and subtractions. So I  
22 wouldn't -- I'm not 100 percent sure at this moment.

23 Q. Would you be able to give a rough  
24 estimate? Are you about halfway finished with the  
25 work that was remaining on June 10, or more than

1 halfway finished?

2 A. Around there.

3 Q. Okay. And can you generally itemize as  
4 of today's date what are the remaining items on your  
5 to do list to finish out this project? What do you  
6 need to do?

7 A. Windows, and any selected tenant finishes  
8 that I named off yesterday.

9 Q. Okay. And for windows, what -- that's  
10 the window replacement?

11 A. Yes.

12 Q. Okay. And remind me. Is that -- I mean,  
13 from your perspective, is that an upgrade, or do you  
14 have an opinion on whether or not the window  
15 replacement is an upgrade or --

16 A. Can you repeat that question? I'm sorry.  
17 You were kind of cutting out.

18 Q. Yes. The window replacement, is that an  
19 upgrade, an improvement to the building?

20 A. No, that's storm damage.

21 Q. Okay. Have you ever called that window  
22 replacement a cosmetic upgrade?

23 A. The full window system?

24 Q. Yes. The window replacement that's going  
25 to be done under your contract, you --

1 A. Not that I'm aware of.

2 Q. I'm sorry. We talked over the top of  
3 each other. Have you ever called that a cosmetic  
4 upgrade?

5 A. Not that I'm aware of.

6 Q. Do you know if anybody --

7 A. It's not a cosmetic upgrade.

8 Q. It's not?

9 A. No.

10 Q. And then I didn't understand item two  
11 that you said was remaining. I heard the word  
12 selected. What else is on your list? What was the  
13 second --

14 A. I'm sorry. Selected tenant finishes.

15 Q. Tinted finishes?

16 A. Tenant finishes.

17 Q. Oh, tenant.

18 A. The items that we talked about yesterday.

19 Q. For the second floor?

20 A. Yes, ma'am.

21 Q. And do you need a tenant before you can  
22 select the finishes?

23 A. I guess they would be the ones that  
24 select them. He would need a tenant. Again, if he  
25 wanted to do something, finish it out right now,

1 then they come in and they want to change stuff up.

2 Q. Okay. So you are on hold on second floor  
3 finishes until there is a tenant that selects the  
4 finishes?

5 A. Correct.

6 Q. All right. And what else is on your to  
7 do list?

8 A. I wouldn't -- I mean, just demobilization  
9 stuff, getting my trailer out of there, dumpster,  
10 lifts, little things like that.

11 Q. All right. So the window replacement,  
12 and what's the status of that? Are y'all ready to  
13 go with it? I think --

14 A. I was actually supposed to have a meeting  
15 this morning with that with the engineers.

16 Q. With the engineers. That's BE-CI?

17 A. Correct.

18 Q. Okay. And what was the meeting supposed  
19 to be about?

20 A. Their proposals for site visits, and  
21 consulting, and water testing.

22 Q. Okay. What's the water testing for?

23 A. What it would sound like.

24 Q. You mean, they are going to water test  
25 the windows that are in there now?

1 A. No, the new -- the new ones.

2 Q. Okay. Maybe I misunderstood. I thought  
3 the windows had not yet been replaced?

4 A. It's consulting, site visits, and water  
5 testing during the installation.

6 Q. Okay. So when it's being -- after it's  
7 installed, BE-CI is going to do water testing?

8 A. I don't exactly -- that's what we were  
9 going over.

10 Q. Okay.

11 A. You know, whenever they show up, are they  
12 doing water testing when they show up? Are they  
13 doing it afterwards? You know, I don't -- those are  
14 the things that I'm not really sure, that need to be  
15 clarified with him.

16 Q. Okay. So you had a meeting scheduled  
17 today at 620 Esplanade?

18 A. No, it was a -- it was a conference.

19 Q. Okay. So a remote conference with BE-CI  
20 engineers?

21 A. Correct.

22 Q. Okay. And who at BE-CI were you going to  
23 conference with?

24 A. I'm not sure. There's quite a few people  
25 that are in there.

1 Q. Okay. It's all BE-CI people?

2 A. Yes.

3 Q. Do you have an e-mail from them?

4 A. Yes.

5 Q. So I guess since the last date on your  
6 subpoena return, all the documents that you gave to  
7 us, you have been continuing to work on this  
8 project. So if I asked you to give us an update  
9 from that last date of whenever you produced  
10 everything to today, you can provide that  
11 information, all your e-mails?

12 A. Everything should be in that folder.

13 Q. Right. But you gave us the folder  
14 sometime back. Maybe it's been a month or so. I'm  
15 not really sure. So we --

16 A. Right.

17 Q. I want a supplement is what I'm asking  
18 for, of anything that's happened since you gave us  
19 your documents.

20 A. Yeah. Again, I think everything has, you  
21 know, been added to the folder since. We just  
22 continue to add stuff to that folder.

23 Q. Okay. Well, I will send a request, and  
24 I'm asking for it now, for Encore to supplement its  
25 documents with any, you know, e-mails, invoices, all

1 communications with subcontractors, with BE-CI.  
2 I'll look at the date -- you know, it's not really  
3 the date you produced it to us, it would have been  
4 the date you captured it. So from that date to  
5 today I need a supplement from you. And also did  
6 you use texts on this project with anybody? Did you  
7 text people?

8 A. I'm sure I have.

9 Q. Okay. Who would you text on this  
10 project?

11 A. I don't -- I can't recall exactly each  
12 individual.

13 Q. So you think it may be a lot of people  
14 that you have in your texts that you talk to about  
15 this project?

16 A. I couldn't tell you.

17 Q. What about Joey Odom? Did you use texts  
18 to talk to him?

19 A. Not really. I was -- again, I was right  
20 across his -- right across the hallway from his  
21 office. So anything that we needed to discuss, I  
22 just went over there to talk about it.

23 Q. What about Jeff Majors? Did you text  
24 with him?

25 A. Possibly. I'm not 100 percent sure.



1 Q. Who were your other main contacts on this  
2 project? What about Aden Monheiser? Did you --

3 A. Aden was pretty much done with the  
4 project at the beginning.

5 Q. Okay. Let me ask you at this point to  
6 make sure -- do you still have the same phone that  
7 you used starting last year in September 2020?

8 A. Yes.

9 Q. Okay. Make sure that you don't delete  
10 any texts, keep those. And I will ask you for -- to  
11 produce texts with Jeff Majors. And if there's  
12 anybody else on this project that you had  
13 substantive communications with via text, I'd like  
14 to get those starting from September, I guess --  
15 what was your date of first involvement in this  
16 project?

17 A. It was around September, mid September,  
18 October-ish. Again, I'm not -- I don't have the  
19 exact date that I was down there.

20 Q. Okay. So going back to about  
21 September 15, 2021. So you know you had texts with  
22 Jeff Major, we'll ask for those, and anything with  
23 Joey Odom. And if you had any other substantive  
24 texts with anybody about this project, I'll ask for  
25 those starting on September 15. So please don't

1 delete any of those.

2 MR. WOLFF: Mary Anne, can we  
3 actually make that August 28. Because  
4 there were some indication of very early  
5 contact.

6 MS. WOLF: Absolutely. Yeah.

7 BY MS. WOLF:

8 Q. So just looking at Encore 75, that's,  
9 again, the June 10 pay application. That's our last  
10 pay application that we have. If you look page 2,  
11 the scheduled values, it's got a grand total of  
12 \$1,455,180. Correct?

13 A. What was that?

14 Q. Yeah. Look at Encore 75, the second  
15 page. Are you there?

16 A. Is this the second folder? I'm sorry.

17 Q. We're on --

18 A. Sorry, Encore 75. I got you. I see.  
19 I've got to use my tabs.

20 Q. This is the June 10 pay application,  
21 page 2, scheduled values grand total \$1,455,180.  
22 Correct?

23 A. Correct.

24 Q. And that is the contract amount of  
25 1.36 million, plus a change order amount, a net

1 change order amount of \$95,180 correct?

2 A. Correct.

3 Q. We got that from page 1 --

4 A. Yep.

5 Q. -- on the change order.

6 So that amount, 1. -- let me round off to  
7 1.5 million, it's actually 1.455 million, when  
8 Encore is completely finished, that building will be  
9 back to its pre-Hurricane Laura condition, plus some  
10 improvements, right, for that sum of money?

11 A. Yes. Minus -- I mean, not improvements,  
12 but which should be additional with the windows, as  
13 well.

14 Q. We talked about improvements. You have  
15 told us at least you know of the items that you used  
16 change orders to track. Those are improvements or  
17 upgrades over --

18 A. Okay. Yes. I got you. Yes.

19 Q. And of course you have said that this  
20 amount excludes the roof, correct?

21 A. Correct.

22 Q. That's not in Encore's price. And it  
23 excludes any of the initial mitigation which was not  
24 within Encore's scope, correct?

25 A. Right.

1 Q. And you may have touched on this, but I  
2 just want to point out, or ask the question, that  
3 the change order amount for change order number 4  
4 changed between the two pay applications. It was --

5 A. But I haven't submitted this pay  
6 application. I'm looking at the folder that I  
7 turned over to you guys. That pay application,  
8 looking in your folder, is labeled 995-06.

9 Q. Okay. And you're saying the one that is  
10 Encore --

11 A. The one you're talking about right now  
12 has not been submitted.

13 Q. Got it. Okay.

14 A. I do apologize. But, again, if I have  
15 the context of the label and my file name it's easy  
16 for me to decipher.

17 Q. I understand.

18 MS. WOLF: The next thing I'm going  
19 to do is start the data logs. But this is  
20 a good time for a short break, like, a  
21 five minute break. Is that okay?

22 MR. COX: Sure.

23 MS. WOLF: All right. We'll get back  
24 in 5 minutes.

25 THE VIDEOGRAPHER: Going off the

1 record. The time is 10:43.

2 (OFF THE RECORD)

3 THE VIDEOGRAPHER: We are now on the  
4 record. The time is 10:57.

5 BY MS. WOLF:

6 Q. Mr. Monheiser, I did have a couple of  
7 more questions about invoices. If you look at  
8 book 2 please, and go to Tab N. N is going to be  
9 the first tab in the book, and go to 24. Let me  
10 know when you're there.

11 A. 24?

12 Q. 24. It should be Encore 12.0690 and  
13 0691. Is that what you see?

14 A. Yes, ma'am.

15 Q. All right. So this is an e-mail from you  
16 to Mr. Odom on December 24, 2020. Please see  
17 attached invoice and current statement for the  
18 construction work at 620 Esplanade Street.

19 If you turn the page, you'll see an  
20 invoice and it references a subcontractor, Ryan  
21 Crane -- Ryan Crane and Acoustical Specialties,  
22 right? Do you see that?

23 A. Yes.

24 Q. And this amount was \$11,761.05 correct?

25 A. Yes.

1 Q. What was this work?

2 A. This is a subcontractor estimate. This  
3 is actually an order form for the Nichiha panels.

4 Q. For what panels?

5 A. The Nichiha panels on the outside of the  
6 building. This is the supplier.

7 Q. Okay. Is this an invoice that is  
8 submitted to Mr. Odom for payment?

9 A. No. This is -- I don't really know what  
10 this would be. I may have meant -- sent this as a  
11 mistake. This is what -- you could probably  
12 reference this with a check that have we cut for  
13 Nichiha. But, yeah, I don't know why I would send  
14 this. All this is, it is a subcontractor estimate  
15 submittal form. And this is not an invoice. This  
16 is what I sent to order materials from Acoustical  
17 Specialties. They are a supplier of the Nichiha  
18 panels.

19 Q. Are those the panels that are being used  
20 on the outside of the building?

21 A. Yes, ma'am.

22 Q. If you go back to the first page, and  
23 it's -- the subject line is invoice. The attachment  
24 says invoice 995-02. And it says.

25 Joey, please see attached invoice and

1 current statement for the construction work at 620  
2 Esplanade Street. With tomorrow being Christmas,  
3 you do not have to worry about the seven days.

4 A. Okay.

5 Q. Is that asking him to pay this invoice?

6 A. This isn't an invoice.

7 Q. It's called an invoice in your e-mail,  
8 right?

9 A. The sheet says subcontractor estimate  
10 submittal form.

11 Q. Right. I got that part. Now I'm asking  
12 you about Encore 12.0690, your e-mail to Mr. Odom.  
13 The subject line says invoice --

14 A. I'm sorry, Mary Anne. You were kind of  
15 muffled there, right there. I'm sorry.

16 Q. Go back to Encore 12.0690. That is your  
17 e-mail to Mr. Odom, correct?

18 A. Yes, ma'am.

19 Q. All right. The subject line says,  
20 invoice, correct?

21 A. Yes.

22 Q. If you look at the attachments, it says  
23 invoice 995-02, correct?

24 A. Correct.

25 Q. And if you see the subject, it says.

1                   Joey, please see attached invoice.

2       Correct?

3           A.       Correct.

4           Q.       And then it says.

5                   With tomorrow being Christmas, you don't  
6       have to worry about the seven days.

7                   Isn't that a reference to seven days to  
8       pay it?

9           A.       Correct.

10          Q.       So when you sent this e-mail, your intent  
11       was to have Mr. Odom pay this as an invoice,  
12       correct?

13          A.       No.   This isn't -- this isn't an invoice.  
14       The invoice that I would be referencing said, please  
15       see attached invoice for construction work at --  
16       yeah, I mean, that would be the title of the  
17       document is 995-02, that's the invoice.   This is not  
18       that invoice.

19          Q.       Okay.   So the attached invoice is  
20       referring to the invoices that we have looked at  
21       previously?

22          A.       I don't know what this invoice -- this is  
23       not an invoice.   When have never talked about this  
24       sheet before.

25          Q.       Right.   I'm talking about where it says



1 attachment, invoice 995-02, we talked about that,  
2 that's what we just talked about --

3 A. Yes.

4 Q. -- so that's what's attached?

5 A. Yes.

6 Q. Okay. And so what was the point of  
7 sending Mr. Odom the contractor estimate? What  
8 did -- why did he want that?

9 A. I wouldn't know. I mean, maybe I sent it  
10 to him just to show him the prices of the panels.  
11 Or maybe I just -- I sent it to him on accident and  
12 it was just one of those that was up. But, yeah,  
13 this is a -- this is a subcontractor estimate form.  
14 Essentially I use this as an order form to order  
15 panels.

16 Q. All right. So let's go to Tab 42, and  
17 look at Encore 12.0930. Are you there?

18 A. 12.0930, yes, ma'am.

19 Q. Okay. So this is -- I'm reading at the  
20 top right, 995. That's your job number for this  
21 project right, 995?

22 A. Yes, ma'am.

23 Q. All right. And this is a change order  
24 log, which we talked about yesterday. It's dated  
25 February 1, 2021. And it lists out -- essentially

1 lists out nine change orders, correct?

2 A. Yes.

3 Q. And has a total of \$55,819.92 correct?

4 A. Correct.

5 Q. And I'll go ahead and assume that the  
6 answer is, that based on your testimony yesterday,  
7 this wasn't an invoice for the owner to pay. This  
8 was a way to track things that you considered to be  
9 improvements to the building; is that right?

10 A. Yes.

11 Q. It has a payment received date of  
12 January 3, 2021, next to three of the items. What  
13 does that payment -- what does that correspond to?  
14 Is it one of the checks that we have looked at  
15 earlier?

16 A. Yes, I think it's just referring to the  
17 fact that he has paid that. And we may be able to  
18 go back and figure out when everything was finished  
19 up with these three items. But, yeah, that's  
20 whenever he -- it's just referencing that he has  
21 paid that.

22 Q. Okay. And about the interest. We looked  
23 at the invoices, and I only saw those two interest  
24 payments that we talked about for the 315,000. I  
25 didn't see any invoice from Encore to the owner that

1 states any other interest payments. Do you have  
2 any?

3 A. No. I -- that -- whatever -- that was  
4 the possible last invoice that I sent him  
5 referencing to that, I think 05.

6 Q. You've given us all of the invoices?

7 A. Yes. I mean, everything that I sent him.  
8 Again, but there's -- I -- sometimes I feel  
9 ambitious and I start -- just start making stuff  
10 ahead of time. So that's -- again, there are some  
11 things that are in there that I, you know, may have  
12 not even sent. I just put them in there  
13 experimenting with different ways to do stuff.

14 Q. All right. So now we can go to Tab G,  
15 which is the daily logs. That's going to be in your  
16 first binder.

17 A. I'm sorry. Did you say G?

18 Q. G, yes. So I think you told us yesterday  
19 that these were -- you created these daily logs; is  
20 that correct?

21 A. Yes, ma'am.

22 Q. And, in fact, if you look -- and I'm  
23 looking, for the record, at Encore 11 through 11.05.  
24 And if you look at the left-hand column called added  
25 by, all of the names are your name, right?

1 A. Yes.

2 Q. Would you describe these as detailed logs  
3 and notes of the progress and status of the project?

4 A. Just generalized notes just in case  
5 somebody needs to step in. If I'm gone, that they  
6 would know what's going on. Some of them are  
7 specific, some of them aren't. Yeah.

8 Q. When you were keeping these logs, were  
9 you intentionally leaving any topics out?

10 A. I would have no reason to.

11 Q. Okay. And were you -- was there anything  
12 specifically that you were told to track, or to make  
13 sure that you captured, in these logs? Did anybody  
14 else give you any input as to what went in them?

15 A. No. These are my logs. I don't know  
16 why --

17 Q. Nobody gave --

18 A. I keep the same logs for every single job  
19 that I've got, just marking down general dates,  
20 general conversations with people. So, no.

21 Q. And no one gave you any specific  
22 instruction to include anything in particular in  
23 these logs?

24 A. No.

25 Q. So they start -- if you go to Encore

1 11.05, the first entry date is September 15, 2020,  
2 correct?

3 A. Let's see here. Yes. It says job  
4 created -- I'm sorry -- preliminary schedule has  
5 been submitted. 9/15/20 is the first actual item  
6 that I posted.

7 Q. Okay. And the last date on it is  
8 June 23, 2021, correct? It's on the first page.

9 A. Yes, ma'am.

10 Q. So have you made any entries into your  
11 daily log after June 23, 2021?

12 A. I don't think I've made any logs since  
13 then.

14 Q. Is there a reason why you stopped keeping  
15 track in your daily logs of the progress of the job  
16 on June 23, 2021?

17 A. Not anything specific. Not until I have  
18 a majority of the items taken care of. We haven't  
19 really had -- there's been no work that's been going  
20 on that's been out there, nor has there been any  
21 significant items that I should put in there.

22 Q. Okay. So the first item -- let's go to  
23 September on Encore 11.05. The very first entry is  
24 job created September 21, 2020, correct?

25 A. Yes.

1 Q. And at that point when you created that  
2 job, it was, what, to provide an estimate to the  
3 owner?

4 A. No, it's just whenever I have added the  
5 folder to Dropbox. And so we were just tracking  
6 that job.

7 Q. Okay. And next entry is job created, no  
8 official estimate can be submitted?

9 A. Correct.

10 Q. At that point, you couldn't bid the job  
11 or give an official estimate because Encore wasn't  
12 yet licensed in the state, correct?

13 A. I couldn't submit an estimate, correct.

14 Q. All right. Next is 9/15 you submitted a  
15 preliminary schedule to the owner, that means Joey  
16 Odom?

17 A. Yes.

18 Q. Is that the preliminary schedules that we  
19 looked at yesterday, the three schedules that we  
20 looked at in your folder?

21 A. That's not the three schedules, it says  
22 preliminary schedule.

23 Q. Okay. Was one of those schedules the  
24 schedule that you submitted to the owner?

25 A. It could have been. I'm not sure,

1 whatever I -- what I submitted to him as the  
2 preliminary schedule because it wasn't labeled, my  
3 label.

4 Q. All right. I have a e-mail, we'll look  
5 at it in a minute. We'll go through the daily logs.  
6 But I have an e-mail dated September 15 with an  
7 attached schedule. So we'll look at that. But you  
8 did give a schedule? Based on this entry right  
9 here, you did give a schedule?

10 A. Yes. Yeah, I gave some sort of schedule.  
11 I just don't know which one it would be.

12 Q. And then you wrote in here.

13 This is just on the inside, no exterior  
14 work, need updates on available funding.

15 What does that entry mean?

16 A. Which day are you talking about?

17 Q. I'm on the third item from the bottom  
18 where it talks about the preliminary schedule.

19 A. Okay. I see it. Sorry. I guess, I  
20 mean, we just want to know that -- possibly the  
21 status of where Joey is that with insurance or  
22 funding.

23 Q. And when you wrote in here that schedule  
24 that we're going to look at from September 15, you  
25 make a note that this is inside only, no exterior

1 work is included in that schedule, correct?

2 A. Correct.

3 Q. And that information was conveyed to the  
4 owner?

5 A. Depending on what was in the e-mail. If  
6 I stated that in the e-mail or not, I wouldn't know?

7 Q. Did you tell him? Did you keep him  
8 apprised of what you were putting in the schedule?

9 A. Whatever was in the e-mail is what I  
10 would tell him.

11 Q. Okay. I think you have testified that  
12 you've had -- you had multiple conversations with  
13 him since your desk was set up right by his, or on  
14 the same floor, correct?

15 A. Yes. But, again, looking at the date,  
16 again, I wasn't -- I may have not been there  
17 whenever I submitted some of these items.

18 Q. Were you also submitting the schedule to  
19 Skyline, or Jeff Majors?

20 A. Yes, I believe.

21 Q. Okay. And so did you have communications  
22 with Jeff Majors where they asked you to give them a  
23 schedule?

24 A. I can't remember who asked me to give the  
25 schedule. It was just -- it may have even been in



1 an e-mail. Somebody asked me to give a schedule.

2 Q. Okay. And you told them it was a  
3 preliminary schedule?

4 A. Yes, ma'am.

5 Q. All right. So let's go up to the 9 --  
6 the September 19 entry. Job folder has been created  
7 in Dropbox, plans of DHS have been uploaded.  
8 Waiting on plans for second floor. So at this  
9 point, that's when they're giving you the plans for  
10 the building so that you could start to use those  
11 for your estimate, correct?

12 A. Let me see here. Sorry. What was that  
13 date?

14 Q. September 19.

15 A. Okay. Sorry. I got it. September 19.  
16 And where are you referencing this to?

17 Q. Job folder has been created in Dropbox.  
18 Plans of DHS have been uploaded to plans folder.  
19 Still waiting on plans for the second floor.

20 A. Yes.

21 Q. Okay. Let's move on to the October  
22 entries. I noticed that there is no entries from  
23 September 19 through October 11. And googling, I  
24 see that Hurricane Delta was on October 9. Do you  
25 know why you don't have any entries from

1 September 19 to October 11?

2 A. I may have not been there. I came down,  
3 left, and then came back down, like, the day before  
4 Hurricane Delta.

5 Q. Before -- did you say before?

6 A. Yes, ma'am.

7 Q. So you were in Louisiana and in Lake  
8 Charles for Hurricane Delta?

9 A. Yes. Well actually I was in -- I wasn't  
10 actually in Lake Charles. I was around the area.

11 Q. Did you go and assess Hurricane Delta  
12 damage at 620 Esplanade?

13 A. I don't think I -- I didn't assess. I  
14 just -- I walked the building. Yeah, I guess you  
15 could say assessed the damage.

16 Q. Was there damage from Hurricane Delta?

17 A. No. Just minor leaks. Nothing that  
18 wasn't there before. There was no demo. There was  
19 no -- nothing that was additionally added. Actually  
20 held up pretty well.

21 Q. Okay. There were some leaks from  
22 Hurricane Delta?

23 A. Yeah, from the damage that was caused by  
24 Hurricane Laura.

25 Q. Okay.

1           A.     The windows that were busted out, they  
2     had plywood on them. The -- again, kind of walking  
3     around the site, I don't know the exact locations  
4     where this was at. But you can see where there  
5     was -- where there were leaks that were happening  
6     underneath windows that didn't have good sheathing.  
7     Some of the panels that were missing, those kinds of  
8     items. I think -- you know, but again, there was --  
9     I think I set up a minimal amount of equipment in  
10    there, but no demo was done.

11          Q.     All right. So if we look at the  
12    October 11 entry, you have on there post-storm  
13    inspection, and that's referring to Hurricane Delta,  
14    correct?

15          A.     Uh-huh.

16          Q.     A quarter of the temp roof blew off,  
17    correct?

18          A.     Yes.

19          Q.     No serious leaks or remediation needs?

20          A.     Yep.

21          Q.     And then if you keep reading down, it  
22    says there's going to be a new temporary roof put on  
23    on November 12, right?

24          A.     Let me see here. Yes.

25          Q.     Generator was delivered and hooked up,

1 trailer will be here October 11. What trailer is  
2 that referring to?

3 A. That's my trailer.

4 Q. So you had a trailer on site starting on  
5 October 11?

6 A. Around there depending on when it  
7 actually got here.

8 Q. Okay. That's part of mobilization to the  
9 site to do work?

10 A. Yes.

11 Q. So at this point, you had gotten enough  
12 of a go-ahead from the owner to start mobilization?

13 A. Not -- he -- yeah, I think I would  
14 probably have some sort of go-ahead to be able to do  
15 something here. But depending on where our trailer  
16 was at, I might have just shipped it to here.

17 Q. So the rest of your entry is, walked site  
18 and marked windows for replacement, inspected the  
19 exterior, looked at specific wall details to  
20 determine appropriate replacement, HVAC contractor  
21 will have to be local. Will need some electrical  
22 attention before build back starts.

23 Those were your notes as of that date,  
24 correct? That was your assessment of the building?

25 A. Yes.

1 Q. All right. And next it says.

2 Building structure is in good condition.

3 Main issues are windows, 50 will need to be

4 replaced, siding will need to be replaced. Some

5 curtain walls will need attention.

6 That, too, was your assessment as of the

7 October 11 date, correct?

8 A. Yes.

9 Q. On the October 11 date, just above that

10 one, you set up ten dehumidifiers and fans, power

11 came back on, met potential HVAC, Industrial

12 Refrigeration Corporation. So you met with the HVAC

13 subcontractor on that date?

14 A. Yeah, I met -- let me see here -- yes, I

15 met him on that date.

16 Q. Okay. And that's the one that eventually

17 got the contract to do the work, correct?

18 A. Yes, eventually. He got -- he got a part

19 of it.

20 Q. Okay. You had more than mechanical sub?

21 A. Yes. Not -- I had Dubois Sheet Metal,

22 they did -- they ran all the ducts.

23 Q. Okay. Some of these -- the entries are

24 all small font. So I apologize --

25 A. That's fine.

1 Q. -- it takes me a while to read them.

2 So on -- I'm looking at the date of -- so  
3 look at the date for October 29. And you actually  
4 have two entries, so look at the first one. Have  
5 you got that one?

6 A. Yes, ma'am.

7 Q. Phone call with Patrick Rooney for  
8 Priority Floors?

9 A. Yes.

10 Q. Priority Floors is the subcontractor that  
11 you used for the flooring?

12 A. Yes.

13 Q. All right. And then you write, they will  
14 be the flooring company for this job. So as of  
15 October 29, you had selected a flooring  
16 subcontractor, correct?

17 A. Let me see here. Yes.

18 Q. All right. Will start to collect W-9 and  
19 write up contract for them. And of course, the hold  
20 up there is you can't actually contract with them  
21 until Encore gets its license, correct?

22 A. Correct.

23 Q. And then the next sentence says.

24 There is an understanding that the  
25 flooring may change depending on DHS sign off on the

1 flooring.

2 A. Yes. There -- GSA has requirements for  
3 carpet.

4 Q. Okay. So that was -- and, in fact, if  
5 you keep reading, it says.

6 To make sure there is no delay, I  
7 provided the designer with GSA preapproved flooring  
8 selections.

9 So you were having to wait for both the  
10 designer to do its job, plus DHS to give sign off,  
11 before you could order any materials, correct?

12 A. Let me see here. What date was this?

13 Q. October 29.

14 A. Okay. Let me see here. I'm sorry. I  
15 want to make sure that I understand your question  
16 and reference. Are you saying that I had not  
17 received?

18 Q. So I'll ask my question again.

19 A. Yes. I'm sorry.

20 Q. Are you on the October 29 --

21 A. Yes, ma'am.

22 Q. -- phone call with Patrick Rooney?

23 A. Yes, sir. Yes, ma'am.

24 Q. Okay. So let's go down. It says.  
25 There is an understanding that the

1 flooring may change depending on DHS sign off on the  
2 flooring.

3 So as of this date, you did not have DHS  
4 sign off on the flooring, correct?

5 A. Correct. But I did have it from the  
6 designer.

7 Q. Okay. Did you use Ducote HVAC and  
8 Electrical for this job?

9 A. No.

10 Q. Okay. All right. Let's look at some of  
11 the -- let's move into November now, and look at  
12 some of the November dates. On 11/24, so this was  
13 that notice to proceed date in your contract, right,  
14 the 11/24 date? Do you remember that?

15 A. Yes.

16 Q. All right. So on November 24 you note  
17 that there were two electricians on site at  
18 7:00 a.m. working on first floor demo to make it  
19 safe. So as of that date that the owner said you  
20 could start, and this is before you entered into the  
21 contract, you actually had electricians under  
22 contract, and they did show up on site to start work  
23 at 7:00 a.m., correct?

24 A. They were -- they were there. I don't  
25 think I had them under contract.



1 Q. So you're saying you had not signed a  
2 written contract, but you had hired them to come do  
3 the work? They were under your scope?

4 A. Yes. Again, I may not -- I'm not really  
5 sure exactly how that's framed. But, yeah, I mean,  
6 they may not have had a signed contract at that  
7 point.

8 Q. The two electricians that were there as  
9 preparatory work to make the building safe so you  
10 could start your work, those -- that electrician was  
11 hired by Encore, correct?

12 A. Yes.

13 Q. All right. Let's move on to see what's  
14 happening in December. So on December 7, if you  
15 look at that entry, you've got four electricians on  
16 site. And then it says.

17 Martin Insulation stopped by for prep  
18 material to spray foam roof deck.

19 A. Yep.

20 Q. And I asked you about this yesterday.  
21 Was Martin Insulation one of Encore's  
22 subcontractors?

23 A. Yes.

24 Q. And was -- did Martin Insulation do this  
25 spray foam deck -- roof deck work?

1 A. Pardon?

2 Q. Did Martin Insulation do prep work for --  
3 or spray foam work on the roof deck?

4 A. That's what the notes say.

5 Q. Was that work that Martin Insulation did  
6 under Encore's contract?

7 A. The roof deck?

8 Q. This work right here, Martin Insulation  
9 stopped by for prep material to spray foam roof  
10 deck. Was that under Encore --

11 A. No. That was not under my -- sorry, I  
12 don't mean to interrupt. No, that was not under my  
13 contract.

14 Q. So does that mean that Martin Insulation  
15 was under contract with Encore for a certain scope,  
16 but also did a scope that was outside of Encore's  
17 scope?

18 A. That was not -- they did not -- they were  
19 not contracted with me to do the roof deck.

20 Q. What about any prep work for the spray  
21 foam roof deck? Did they do --

22 A. No. They had nothing to do -- I had  
23 nothing to do with the roof, the roof deck, any prep  
24 for the roof, or the roof deck, anything that was  
25 sprayed on it, no, I did not.

1 Q. Okay. So what I am trying -- I just want  
2 to make sure is that Martin Insulation worked for  
3 Encore as a subcontractor, but also worked  
4 separately, and did this work outside of Encore's  
5 scope?

6 A. Yes.

7 Q. Who did they contract with to do that  
8 work?

9 A. I don't -- that would be the owner that  
10 paid them.

11 Q. Okay. Did Martin Insulation do the  
12 drywall and painting?

13 A. Yes. They did -- they did the drywall,  
14 and then their foreman did the painting.

15 Q. Okay. So if you look at the December 10  
16 entry, here you mention that the owner is not ready  
17 to sign the contract yet. This is ten days before  
18 the contract is actually signed, right?

19 A. What date is this?

20 Q. December 10. And the contract date is  
21 December 20. So we are at ten days before the owner  
22 signs the contract, correct?

23 A. Correct.

24 Q. So at this point, the owner hasn't signed  
25 the contract, but gave you the go-ahead on

1 November 24 to start work. At this point, you have  
2 been getting design, getting subcontractor pricing,  
3 you have actually retained, or hired, some of the  
4 subcontractors to start some of the preparatory  
5 work, you've been doing demo and electrical work.  
6 And all of that has occurred up to December 10,  
7 correct?

8 A. Correct.

9 Q. If you look at this December 10 entry, it  
10 says -- and I'm picking up in the last line, or the  
11 second to last line.

12 I am still hedging for him on the DHS  
13 updates. Not sure how long I can continue to delay  
14 before the subs get busy with other work, which will  
15 only add to the job duration.

16 So let me ask you about that statement, I  
17 am still hedging for him on the DHS updates. What  
18 is that referring to when it says DHS updates?

19 A. The phone calls. I'm hedging for Joey on  
20 the phone calls with DHS.

21 Q. Did DHS call you directly?

22 A. They set up a conference line.

23 Q. Okay. And you were on those conference  
24 calls?

25 A. Yes, ma'am.

1 Q. And who was it with DHS? Do you remember  
2 any of the names, or who was the head person that  
3 you were talking to?

4 A. Michael Harvey.

5 Q. All right. And so what were Mr. Harvey's  
6 questions on those conference calls?

7 A. Basic -- basic items, how we're coming  
8 along, what we're planning on doing. Basic -- at  
9 that point, I have already submitted to them the  
10 submittals on the interior, had some discussions  
11 about the exterior items. And essentially telling  
12 them that -- that -- how everything is going. What  
13 the building looks like. How everything is going.

14 Q. Did you give a schedule to DHS? One of  
15 those schedules that we looked at that has the bars  
16 on it?

17 A. Yeah, I do remember submitting some  
18 schedule to them.

19 Q. Okay. And when you say hedging for him,  
20 the him is Mr. Odom, correct?

21 A. Yes, ma'am.

22 Q. All right. And so what does that mean  
23 exactly that you're hedging Mr. Odom on the DHS  
24 updates?

25 A. I was hedging for him to -- between the

1 DHS and Joey Odom to make sure that -- I mean,  
2 essentially there was a contract for a long-term  
3 rental. And so Joey didn't want to lose his tenant,  
4 so I was hedging for him.

5 Q. And what you mean by hedging? What were  
6 you -- what does that mean that you were doing?

7 A. I was highlighting the good things about  
8 the building.

9 Q. And what were those?

10 A. That it will be done. That we're in  
11 contact with subcontractors and -- yeah.

12 Q. Did you give DHS that specific target  
13 date or completion date in December, by the end of  
14 December 2020?

15 A. I don't remember. I think I gave -- I  
16 think I sent a preliminary schedule to Joey, and  
17 then Joey sent it to them. I think that's why I  
18 submitted some schedules early on. Again, and that  
19 was -- that was to show an estimated finish date.

20 Q. By the end of December?

21 A. Yes.

22 Q. I have -- I'll ask you about that in a  
23 minute because I think I have the e-mail and the  
24 schedule, so we might as well be looking at that  
25 when I ask you some questions about it.

1           If we keep going here, like, this  
2 December 19 entry, you have got six exterior workers  
3 on site from 7:00 a.m. to 6:00 p.m. That's a full  
4 day for a contractor, right?

5           A.     Yeah. I mean, whatever it takes to get  
6 it -- whatever they are willing to work. It's  
7 usually I just identify when they are there and when  
8 they leave.

9           Q.     Removed panels and rotted plywood on  
10 first and second floor. There was some items like  
11 that where rotted plywood, for example, is not going  
12 to be something that's covered by insurance; is that  
13 right?

14          A.     That's in my change orders.

15          Q.     But that's a correct statement, things  
16 like rotted plywood --

17          A.     Right. Yeah. Yeah.

18          Q.     Let me just finish just to be clear. You  
19 knew that that item wasn't something that would be  
20 charged to the insurance company, correct?

21          A.     Correct.

22          Q.     In the December 20 entry, that's the date  
23 that you entered into the contract with the owner.  
24 Is there any entry on December 20, or December 21,  
25 noting that you now have a written contract signed

1 with the owner?

2 A. No.

3 Q. That December 20 entry mentions WRB  
4 Prosoco R-Guard Cat 5. What is that material? What  
5 does that refer to?

6 A. That is a water and air barrier. It's a  
7 liquid applied water and air barrier.

8 Q. Okay. So something that was required for  
9 waterproofing of the exterior walls?

10 A. Yes.

11 Q. All right. And that work is underway on  
12 December 20th, correct?

13 A. Yes.

14 Q. So you do note percent completions in  
15 here. I'm looking at one for December 22, where,  
16 again, you've got 8 exterior workers on site from  
17 7:00 a.m. to 7:00 p.m. So that's a full-day, right?

18 A. Yes.

19 Q. And at the end of that entry you say, to  
20 date they are 30 percent completed with demo, and  
21 25 percent completed with waterproofing. That was a  
22 correct entry on your part?

23 A. I guess. Yeah.

24 Q. All right. So on December 28, you've got  
25 6 exterior workers arriving at 7:00 a.m. and leaving



1 at 7:00 p.m. So you have a full day of work going  
2 on there for the exterior, correct?

3 A. Yes.

4 Q. And if you keep reading, you say.

5 The building is 65 percent completed with  
6 demo and 50 percent completed with sheathing  
7 replacement and water proofing. Correct?

8 A. Yes.

9 Q. And then you've got two electricians that  
10 start at 8:00 a.m. and finish at 3:00 p.m., correct?

11 A. Correct.

12 Q. And the last item says demo drywall on  
13 inside for spray foam insulation application. This  
14 is for the exterior walls?

15 A. Correct.

16 Q. Was that spray foam insulation applied in  
17 the exterior walls, was that an upgrade?

18 A. Yes. That is also in my change orders.

19 Q. Okay. As well as the demoing the drywall  
20 and replacing it, or did the drywall have to be  
21 demoed anyway?

22 A. They drywall is going have to be demoed  
23 anyway.

24 Q. Now I don't -- you known, I don't want to  
25 take up our time with reading every one of these

1 entries. But just to confirm. Where you have  
2 noted, say, for example on January 4, 2021, 8  
3 exterior workers on site from 6:00 a.m. to 6:00 p.m.  
4 And where you note the percent completed, like, on  
5 this date, demo is 90 percent completed, sheathing  
6 is 80 percent completed, and waterproofing is  
7 70 percent completed. These are all accurate  
8 statements, correct, about the progress of the  
9 construction?

10 A. Yes.

11 Q. They are all accurate, right?

12 A. Yeah. I mean, they're -- it's a  
13 guesstimate. I mean, I'm not doing exact  
14 percentages. It's just a -- they are done with the  
15 west side of the building, I would say that's 25  
16 percent.

17 Q. Okay.

18 A. Like that.

19 Q. Go to 12 -- the entry for December 18.  
20 And it says.

21 Spoke with Jerry on the phone from  
22 Associated Waterproofing. He will be bringing a  
23 crew out tomorrow to start the exterior.

24 A. Yes.

25 Q. So on that date, two days before the

1 owner signed the contract, you've got Associated  
2 Waterproofing lined up to come out and start the  
3 next day, correct?

4 A. Yeah. But I had had them lined up --

5 Q. Okay.

6 A. -- before that. I had them lined up  
7 before that. I can't remember the first day that I  
8 met with them. But it was pretty much within about  
9 two to -- about two weeks we had discussions about  
10 doing -- even doing interior work. And I was even  
11 thinking about using them for drywall and ceiling  
12 work, having it all into one contractor. I do  
13 remember those specific items. But I did not decide  
14 to go with them, because they were a little  
15 expensive on some of the items that I was thinking.  
16 But -- so, yeah, I mean, I had them lined up ready  
17 to go on 11/24 -- by 11/24.

18 Q. Okay.

19 A. And I was coaxing them out there by 12/6.  
20 That first week in December I was -- I was making  
21 daily calls trying to get them out there. And then  
22 by 12/16, he called me and said we're on our way.

23 Q. Now after this date -- after the 12/18  
24 going forward all the way to June, I didn't see any  
25 further comments that had anything to do with delay

1 in the project related to insurance payments.

2 A. Because I was on another path at that  
3 point.

4 Q. Okay. So whatever is in these logs, you  
5 stopped on that date, on 12/18, putting any entries  
6 in there about delay to the project caused by  
7 delayed insurance payments? You agree with that  
8 statement?

9 A. Yeah. One, I probably stopped having  
10 discussions with the owner about some of this stuff.  
11 And again, we were -- in passing in discussions with  
12 Skyline, there was just an over and over again  
13 dialect about the fact that they will pay. And so  
14 we did not really have any -- we didn't have very  
15 many discussions about this, the payments. And  
16 again, I had a lot of other things going on at that  
17 time. So I was mainly talking about what was going  
18 on at the -- on the job versus payments.

19 Q. When you say you had other things going  
20 on, are you talking about busy with this work on  
21 this project?

22 A. Yeah. Yeah. We were -- we were  
23 scrambling.

24 THE WITNESS: Would it be okay if we  
25 took a five minute break? I've got to go

1 to the bathroom.

2 MR. COX: Let me suggest this. We're  
3 almost at noon. I'd like to take a lunch  
4 break until 1:00 and we can resume.

5 MS. WOLF: If we're going to break  
6 now, which I have no problem with doing  
7 lunch right now, since we're breaking  
8 anyway. Just to make sure that we get  
9 finished at a reasonable time today, can  
10 we start back at a quarter till --  
11 actually even 12:30? Can we start back at  
12 12:30.

13 MR. COX: I have some things I have  
14 to do. I don't think I'll be done by  
15 12:30, but I can do 12:45.

16 MS. WOLF: Okay. Let's do 12:45.  
17 We're going break now for lunch.

18 THE VIDEOGRAPHER: Going off the  
19 record. The time is 11:48.

20 (OFF THE RECORD)

21 THE VIDEOGRAPHER: We are now on the  
22 record. The time is 12:47.

23 BY MS. WOLF:

24 Q. All right. Mr. Monheiser, I want -- when  
25 we first started talking about this daily log under

1 the September 15 entry, there was an entry that you  
2 made for preliminary schedule has been submitted to  
3 owner. I want to see if we can identify that  
4 schedule. And you produced your folder, and it's  
5 got some schedules in it. I believe you have them.  
6 Can you tell me which schedule was created on 9/15?  
7 Do you have a copy of it?

8 A. I do -- let me see here.

9 Q. Actually I have -- I've got one pulled  
10 up. I'm going to share my screen and show it you  
11 and then --

12 A. Yeah. It's just -- it should be labeled  
13 preliminary schedule.

14 Q. Okay. So I'm going to show you what I've  
15 got. Okay. You can see that?

16 A. Yes.

17 Q. So you say it should be labeled  
18 preliminary schedule. Where would we look for that?

19 A. In the e-mail that it's in.

20 Q. Okay. The one we're looking at, for the  
21 record, we got this out of the owners documents  
22 indicating that the owner had it. That's  
23 Eaux-Odom-Four0 96 through 96.03. So let me ask you  
24 about this one first. It shows on line 63, a  
25 certificate of occupancy date of December 22, 2020.

1 Do you see that?

2 A. Yes.

3 Q. So does this look like the kind of  
4 schedules you were preparing for the owner and for  
5 this job?

6 A. It does.

7 Q. Okay. And you see that it's got a start  
8 date of September 15th on it, correct?

9 A. Correct.

10 Q. So we can look at -- let me show you the  
11 e-mail. For the record, this is Eaux-Odom-FourO 95  
12 and 95.02.

13 A. Okay.

14 Q. All right. So this is an a e-mail from  
15 Aden Monheiser to Joey Odom with a cc to Jeff Major  
16 and Jade Bentz. And it has as an attachment, rough  
17 draft schedule 9/15/2020. You see that?

18 A. Yep.

19 Q. All right. He says -- Mr. Monheiser,  
20 Aden, says.

21 Joey, I know the Department of Homeland  
22 Security is leaning on you for a schedule, so maybe  
23 this is something you can share with them to hold  
24 them over. Attached is a very rough draft of our  
25 construction schedule with some very basic figures

1 attached to the draw schedule. We will tighten all  
2 this up as we get closer to actual estimates from  
3 subs. Let me know what you think. Aden.

4 This is referencing, it's got attached a  
5 9/15 schedule. Is this the same schedule that you  
6 are referring to in your daily logs?

7 A. Yes, that would -- that would probably be  
8 it.

9 Q. Okay. And so you prepared the schedule,  
10 right?

11 A. Yes.

12 Q. And you gave it to Aden. And I suppose  
13 he sent it on to the owner?

14 A. Yes.

15 Q. And you were aware that you were  
16 preparing this for the owner?

17 A. Yes.

18 Q. And that it was provided to the owner?

19 A. Yes.

20 Q. All right. And this schedule represents  
21 a completion date of December 22, 2020; is that  
22 correct? That's what you see here on this schedule,  
23 correct?

24 A. Correct.

25 Q. And as we discussed yesterday, and



1 actually let's go back to the first page. If you  
2 start to scroll down the start dates of  
3 September 15, October 1, November 2, there are a lot  
4 of dates prior to November 19. In fact, most of the  
5 dates on this page are prior to November 19 when  
6 Encore got its license, correct?

7 A. Correct.

8 Q. So at this point, it would not have been  
9 feasible, or even legally possible, for Encore to  
10 start any of the work prior to being licensed,  
11 correct?

12 A. Can you please repeat that question?

13 Q. Right. It wasn't legally possible for  
14 Encore to start or perform any of this work prior to  
15 November 19, correct?

16 A. Correct.

17 Q. And Mr. Odom was aware of that, right?  
18 He was aware of the prohibition about -- of Encore  
19 even performing the work prior to November 19,  
20 right?

21 A. Yes.

22 Q. I want to look at some of the information  
23 below in this e-mail. And again I'm looking at  
24 Eaux-Odom-FourO 95. And this is from Aden Monheiser  
25 to Joey. I want to go through some of this. Item

1 number 1, I have our designer involved to get some  
2 schedule boards on finishes for GSA.

3 So at this point, you were providing  
4 information to the first floor tenant, right?

5 A. We weren't providing any information.  
6 It's just we have a designer.

7 Q. So you had engaged a designer for the  
8 purpose of determining a schedule of finishes for  
9 the first floor tenant at this point in September,  
10 correct?

11 A. Yes.

12 Q. And item number 2. We have a rep from  
13 STO dropping by tomorrow, weather permitting, to  
14 inspect the project. Who is STO?

15 A. It's STO, it's a exterior cladding  
16 company.

17 Q. Okay. And what part of the system does  
18 item number 2 refer to? What component of the  
19 building?

20 A. That would be the exterior panels.

21 Q. Okay. And number 3, we should have a  
22 schedule out to you by tomorrow. We are basing  
23 everything on an October 1 start time. That's item  
24 number 3, correct?

25 A. Correct.

1 Q. And, of course, on October 1 you wouldn't  
2 have actually been able to start anything as far  
3 estimating or starting construction of the project,  
4 correct?

5 A. Correct.

6 Q. For number 4, it says.

7 We've submitted a scope of work to our  
8 subs, and have lots of interest in the project. We  
9 should have more than enough help to get this done  
10 in a timely fashion. That being said, it all is  
11 based on finishing schedules and product  
12 availability.

13 So one of the things that you -- that  
14 could impact the schedule is the ability to be able  
15 to get the products, right?

16 A. Yes.

17 Q. For example, you keep going here. If the  
18 carpet you prefer is on backorder, you know, that  
19 could be a problem unless they switch to something  
20 else, right? So you're pointing out the problem  
21 with availability of the materials, correct?

22 A. Yes.

23 Q. And actually that's what you wrap up --  
24 well -- I'm sorry, this is Aden Monheiser. You  
25 were -- you were privy to this information --

1 A. Yes.

2 Q. -- as well? The information that's  
3 outlined in 1 through 5?

4 A. Yes.

5 Q. Okay. So on number 4 wraps up. With  
6 extended lead times and product availability are  
7 things that can drag out the process. So you were  
8 aware of that, that delays can be caused by lead  
9 times and product availability, correct?

10 A. Yes.

11 Q. All right.

12 A. Again, this is just basic information  
13 about any job at any point in time. That we want to  
14 make sure we are trying to push the owner to select  
15 some materials.

16 Q. So you were aware that the owner was  
17 going to provide this information to the Department  
18 of Homeland Security?

19 A. Yes.

20 Q. Including the schedule?

21 A. Yes.

22 Q. Including the representation on the  
23 schedule that the job could be completed before the  
24 end of December?

25 A. That's why it says a very rough draft.

1 And we wanted to implement that. And again, and  
2 depending -- a lot of this stuff, as far as you are  
3 looking at, yes, it does depend on materials, it  
4 does depend on that. This is a very rough draft  
5 schedule. Which we were implementing hard because  
6 of start time, and because of the material -- time  
7 to get materials, selections, you know, all those  
8 different things.

9 Q. Did you ever tell the first floor tenant,  
10 Department of Homeland Security, that the schedule  
11 was actually dependent on Encore getting its license  
12 before the work could start?

13 A. No. I don't remember.

14 Q. Do you know if the owner told the  
15 Department of Homeland Security that one of the  
16 factors that would influence that schedule was  
17 Encore getting its license?

18 A. I have no clue.

19 Q. When you prepared the schedule that we  
20 see on Encore 96, did you have an understanding, or  
21 were you aware, that this schedule was going to be  
22 submitted to the insurance company in connection  
23 with making some type of delay claim?

24 A. No. We -- if they asked me if they're --  
25 if I'm okay with submitting a schedule, I'm fine

1 with them submitting a schedule. Again, this is  
2 a -- it's a templated schedule. You just enter  
3 dates. We've -- at that point, it's 9 -- I don't  
4 know what that date was 9/15. And so, I mean, I  
5 haven't -- I may not have even been to that job at  
6 that point. And so this is a templated schedule  
7 about the average time that it takes to perform  
8 work.

9 Q. Who all did you distribute this, or any  
10 similar preliminary schedule, to, other than the  
11 owner?

12 A. Anybody. That would be on e-mails,  
13 Skyline, Joey. That's really it. I think that's  
14 the only people that I would want to submit a  
15 schedule for that early on.

16 Q. Did you give a copy to Andrew Vanchiere  
17 with Latter & Blum?

18 A. I don't remember. I don't remember  
19 actually having his contact information. Until  
20 possibly the discussions about the second floor  
21 tenant, which, again, I don't really know when that  
22 was. But it would be around that time whenever I  
23 would get a -- when I was in contact with him.

24 Q. Do you know if anybody else gave it to  
25 Andrew Vanchiere with Latter & Blum?

1 A. I do not.

2 Q. Okay. All right. I have another one I  
3 wanted to ask you about. Can you see this one?  
4 It's Encore 12.0166. Do you see that?

5 A. Yes.

6 Q. And this is actually -- it's in your  
7 notebook as well, so you don't have to look at it on  
8 the screen. This would be under Tab N, number 5.  
9 You have it?

10 A. Yes.

11 Q. All right. So this is an e-mail from you  
12 to Jeff Major with a cc to Jade Bentz. Who is Jade  
13 Bentz?

14 A. She is a -- she works for Skyline.

15 Q. What is her position?

16 A. I would say operations.

17 Q. All right. So this date on here is  
18 September 29, 2020. And it's got an attachment with  
19 the September 28, 2020, schedule and an image. I'm  
20 not sure what the image is. And it says.

21 Jeff, I have attached a schedule for the  
22 Four-O DHS property on 620 Esplanade Street. I have  
23 a start date scheduled for the 1st week of October,  
24 and the deadline for the completion of this job. I  
25 have outlined dates on this schedule that we are

1 approaching and/or already behind on. Every week  
2 that we get delayed is going to cost more. The  
3 following list is going to have to be accounted for  
4 if we continue to delay.

5 Do you recall preparing and sending this  
6 e-mail to Mr. Major?

7 A. Yes. Let me see here. Maybe not in  
8 specific, but, yeah.

9 Q. What prompted you to prepare and send  
10 this e-mail to Skyline on September 29?

11 A. Just to share a schedule with them.

12 Q. As far as the schedule, the way you gave  
13 us your e-mails were all, like, a 1200 page PDF.  
14 And this is the e-mail -- what you are seeing on  
15 your screen are those e-mails, 1216 of them. And so  
16 we have this e-mail, but we don't have the  
17 attachment. But I understand from your testimony  
18 that you can pull your schedule from your schedules  
19 folder. And what I want to know is, what was this  
20 attachment, this 9/28/2020 schedule, that was  
21 attached? Is it the same as the September 15, or is  
22 it something different?

23 A. Yeah, it could be. Again, I make a  
24 variety of schedules for a variety of different jobs  
25 and reasons. So let me see here.



1 Q. Are you looking right now in your folder  
2 called schedules?

3 A. I'm looking in the project folder.

4 Q. Okay.

5 A. No, it is not. It's not in there.

6 Q. Okay. Does that mean that the one that  
7 we looked at prior, this Encore 96 with the start  
8 date of September 15, is that the schedule that's  
9 named 9/28/2020 schedule, or would there be  
10 something else?

11 A. That could be -- that could be the one.  
12 I'm not 100 percent sure.

13 Q. Do you see in your folder called schedule  
14 something called Four-O 9/28/2020 schedule, a PDF?

15 A. No.

16 Q. All right. So you would be able to go  
17 back to your e-mails from last September and pull up  
18 the actual native e-mail and provide that to us with  
19 the attachment, correct?

20 A. Yes.

21 Q. All right. I will ask you to do that.  
22 And we're talking about two weeks after this  
23 schedule that's dated Eaux-Odom-FourO 96 was  
24 prepared, right?

25 A. Yes.

1 Q. All right. So what I want to do, since  
2 we don't have that schedule, and there is just a two  
3 week differential, do you have any reason to think  
4 that this 9/28 schedule is -- if it's any different,  
5 is substantially different from this one we are  
6 looking at here on the screen?

7 A. Things may have changed. I mean, I  
8 really do not know. I mean, having substantial  
9 items taken care of would be very specific. Again  
10 with the e-mail, there are items where we want to  
11 make sure that -- that are accounted for. You know,  
12 sometimes even sending stuff to Joey, making sure  
13 that they are staying on track with a deadline for  
14 selecting materials. We want to make sure --  
15 because, again, we don't have first contact with the  
16 insurance company. So there are times where we want  
17 to make sure that we are getting our point across  
18 that these items need to be taken care of, and need  
19 to be accounted for and/or if they are accounted  
20 for.

21 Q. Let me ask you this. Did Mr. Major ask  
22 you to send him this e-mail?

23 A. No.

24 Q. You prepared it on your own with  
25 nobody --

1           A.       Nobody asks me to e-mail anything, other  
2       than if I need to, you know, ask certain questions  
3       for, you know, any specific reasons. But, no, this  
4       would not -- I don't know why anybody would ask me  
5       to e-mail this. This is just us trying to figure  
6       out where the -- their scope is at, and accounting  
7       for certain items.

8                   And so, again, like, we're wanting to  
9       make sure that everybody -- during certain hurricane  
10      situations there's a lot going on. There's a lot of  
11      people doing a lot of things. We want to make sure  
12      that Skyline is staying on this job and accounting  
13      for stuff on this job. So, you know, at points,  
14      yes, we would -- we would put emphasis on, we need  
15      to get this taken care on. What is it accounting  
16      for? You know, how much is the owner getting? You  
17      know, those kinds of situations, like, you know,  
18      what's the questions that they're asking so that we  
19      can possibly give them some answers.

20                  I don't like to do very much argument as  
21      far as arguing damages. If its damage, its damage,  
22      if it's not, it's not. And so I just need to know  
23      where it's at to see if we need to do any more  
24      specific work. So these e-mails, again, it's just a  
25      representation to make sure that they are

1 communicating with people that they need to  
2 communicate with, and if they return an e-mail.

3 Q. Okay. In the e-mail where you say, I  
4 have outlined dates on the schedule that we are  
5 approaching, and/or are already behind on. Are you  
6 referring to any of the dates that would require --  
7 that involve bidding, or contracting, or estimating?

8 A. I couldn't tell you.

9 Q. Those things you were not able to do  
10 prior to November 19, correct?

11 A. Correct.

12 Q. So any of the items on the task list, any  
13 of these task named items that fall into the  
14 category of estimating, bidding, or contracting, you  
15 couldn't do on any date here, you couldn't start it  
16 prior to November 19, correct?

17 A. Correct.

18 Q. All right. It says, the following list  
19 is going to have to be accounted for, if we continue  
20 to delay. Now at this point, have you even worked  
21 up the \$1.36 million cost?

22 A. No. So if you're -- if you kind of  
23 reference back to some of the items. Whenever  
24 there's a storm, people get -- they pretty much  
25 accept too much work. So again, those things start

1 to get delayed. I can -- there's one thing that I  
2 know. Is I can pull people from Kansas City to come  
3 help -- to come to work. You know, whether it's  
4 working 24 hours a day, we've done it, we have been  
5 there. You know, I -- at this point, I am not  
6 100 percent aware of very much of the insurance  
7 stuff that's going on.

8           So -- but from what I possibly did know,  
9 I needed to know if I was going to have to account  
10 for more money to bring subs down. And again it's  
11 just the generic item where I'm trying to figure out  
12 where I'm going to have to pull subs from, and to  
13 bring them down, or if I can get local guys there.

14       Q.     Okay. But with all of that, you still  
15 can't enter into a contract with any of them until  
16 after November 19, correct?

17       A.     At this time, yes. But at that time, we  
18 didn't know when we could.

19       Q.     But you knew that you couldn't do it on  
20 September 29 --

21       A.     There was a very -- I'm sorry. I didn't  
22 mean to interrupt you. I'm sorry.

23           I could have -- we could have gotten our  
24 license the next day. They could have given us the  
25 next day, or two weeks from then, or -- but again,

1 looking back at it at this point, yes, it couldn't  
2 have been until the 19th. Which, again, we could  
3 have accounted for that.

4 Q. Right. On September 29 when the e-mail  
5 was sent, on that day, you knew you were not yet  
6 licensed, correct?

7 A. Yes. And again, you know, I am preparing  
8 to -- at any point in time to be able to have that.

9 Q. All right. If we look down at the  
10 following list is going to have to be accounted for,  
11 if we continue to delay. One is freight cost to  
12 expedite material orders on windows and exterior  
13 cladding. And again, you can't order the windows or  
14 the exterior cladding until, one, you have an  
15 engineer or your design professional selected, and  
16 then, two, the owner approved it?

17 A. Hold on. We -- we selected the exterior  
18 cladding. We went to the design professional to --  
19 Nichiha is a broad product that I was well aware of  
20 before the -- before this job. I mean just panels  
21 in general. And she had panels before. So we  
22 wanted to stick with the paneling product. And so,  
23 I mean, I pretty much started researching the -- you  
24 know, just an average panel for -- for a -- for a  
25 building pretty much off the bat, along with

1 contacting STO.

2           So, you know, again, I get to -- we know  
3 that material. We know that we -- I know the  
4 material. I know -- I think I was getting --  
5 there's probably some e-mails about Nichiha sending  
6 us some samples.

7           Q.     Okay. So let me ask as -- let me ask  
8 this question on the exterior cladding. That was  
9 what BE-CI was hired to do. And at this point, they  
10 had not yet been out to do their inspections, or  
11 prepared any of their plans and specs, correct?

12          A.     Correct. Yeah. But we already knew who  
13 they were going to -- or what -- around this time,  
14 is whenever we started figuring out the product that  
15 we were wanting to use.

16          Q.     All right. But at this point on  
17 September 29, you couldn't have ordered windows or  
18 cladding material, because you weren't yet licensed,  
19 correct?

20          A.     I could have. I could have ordered  
21 anything for any specific reason.

22          Q.     It's your position that, as an unlicensed  
23 contractor, you could order -- you could order  
24 supplies for a project that you are not even  
25 contracted on as general contractor?

1           A.       No. It's just a general phrase that I'm  
2 saying. But, yeah, I mean, again, as this date is  
3 approaching, you know, we need to make sure that we  
4 have everything selected and -- and ordered by a  
5 certain date. And again, that's -- I'm just  
6 referencing this as if at any point in time we could  
7 have our license put through.

8           Q.       Right. But at this point on  
9 September 29, not having the -- Encore not having  
10 its state license was a legal prohibition against  
11 Encore moving forward with contracting with the  
12 owner, or any supplier, or subcontractor, on this  
13 project, correct?

14          A.       Correct. And let me put it to you this  
15 way. I'm preparing to have my license the next day.  
16 At any point in time from October to, you know,  
17 November, I am preparing for -- once I have that,  
18 that specific date, I'm ready to go. It doesn't  
19 matter, you know, when it is, I want to make sure  
20 that I am as prepared as I can for the owner.

21                 Because I know that if I provide a date,  
22 that I -- you know, if we have this license at this  
23 point, we can go. And that's what I'm trying to  
24 prepare for. We don't -- it doesn't take me a whole  
25 bunch of time to do preparations. It doesn't take



1 me whole bunch of time to -- you know, we are in  
2 remediation work. We do it all the time. We show  
3 up at 12:00 at night. And we are done by -- in two  
4 days with construction and all that.

5           So again, I understand where this is.  
6 But again, I am preparing myself to get my license  
7 and that -- that the next day. I'm preparing.  
8 Because that's what we do. But again, obviously it  
9 wasn't until November. But at the time of this, I'm  
10 preparing.

11           Q.     Okay. Did you tell Jeff Majors that?  
12 Did you keep him fully apprised of the licensing  
13 issue?

14           A.     I can't remember.

15           Q.     Did Encore have any type of agreements  
16 with Skyline, or do you have any --

17           A.     No.

18           Q.     -- agreements with Skyline?

19                   I asked you this yesterday about how  
20 Encore became involved with Skyline. I believe you  
21 said Aden Monheiser handled that part of it; is that  
22 correct?

23           A.     Monheiser.

24           Q.     Yeah, Monheiser, Aden.

25           A.     Yes.

1 Q. Okay. So you're not able to address or  
2 give testimony as to Encore's involvement, or how  
3 they became involved with Skyline? You don't know  
4 that information?

5 A. I mean, I do know information about it,  
6 yes.

7 Q. Okay. So tell me how is it that Encore  
8 became involved with Skyline?

9 A. We've done work with them in the past.

10 Q. All right. How far in the past? When's  
11 the first time you did any work with Skyline?

12 A. 3 years ago.

13 Q. Okay. What type of -- what were those  
14 projects that you did with Skyline 3 years ago?

15 A. It's just a -- it's an insurance job.

16 Q. Okay. How many?

17 A. One.

18 Q. So other than this particular job that we  
19 are talking about at 620 Esplanade, Encore has done  
20 one other job with Skyline?

21 A. Yes.

22 Q. And are you currently doing any other  
23 jobs with Skyline?

24 A. No.

25 Q. And who did -- who did Encore work with

1 at Skyline on this job 3 years ago?

2 A. Jeff Major.

3 Q. Did he call you up after Hurricane Laura  
4 and tell you about this particular project?

5 A. I mean, he called me after Hurricane  
6 Laura, yes. But again, I think that's once we  
7 already had contact with -- we knew that we were --  
8 had the possibility of getting this job. They're a  
9 good company. We like working with them. Whenever  
10 you have adjusters that -- that -- I jokingly say  
11 that Xactimate is a quantity surveying application.  
12 Because it's not an estimating format. And they  
13 agree with me on that.

14 So again, the relation -- they have an  
15 understanding. They do ask for input in on some --  
16 on certain things because they know that estimating  
17 does not -- it's not represented in Xactimate. And  
18 I do not like using Xactimate. And so we -- they  
19 are a great company to work with because they take  
20 our work and my estimating format into  
21 consideration. And so we don't typically like to  
22 work with outside -- outside people on jobs.

23 Q. Let me ask you this. Can you explain to  
24 me what -- when you say exact Xactimate doesn't do a  
25 good job of estimating, tell me what do you consider

1 to be the flaws with Xactimate?

2 A. It doesn't -- so if you are going to  
3 measure for drywall, Xactimate is going to give you  
4 a square footage price, okay, it's going to give you  
5 a per square footage price. And that's not how  
6 that's -- it's done. That's not how a contractor --  
7 somebody who bids drywall does it. If you look at  
8 my measurements with, I think, Martin Insulation  
9 you'll look -- we measure by boards.

10 So if you have a wall that's 8-foot by  
11 8-foot -- or 8-foot wide, you know, and 10 feet  
12 tall, it's -- they count it, so there's 1, 2, 3 -- 3  
13 sheets of 4 by 8. And so that's how they do that  
14 calculation. And it's very difficult to get that  
15 price into Xactimate and account for it to be  
16 accurate.

17 Also it doesn't take into account  
18 material updates daily. I think back in December,  
19 or maybe it was, like, February, I started looking  
20 at sheeting, an estimate in Xactimate it was still  
21 at, like, \$35. And if you go to Lowe's it's, like,  
22 60 bucks. It doesn't -- it's a good product for a  
23 small job. I just don't like how it separates.  
24 Painters don't paint by the square foot of a wall.  
25 They paint by the square foot of the footprint of

1 the building.

2           You know, like, that's what -- they  
3 will -- a lot of the bids that we do get, that's how  
4 they do it. There's no such thing as, you know,  
5 painting, you know, trim, or any of that. It's just  
6 a basic estimating. Is too complicated to look at.  
7 Which, again, for insurance purposes, it might be  
8 good. It's just not realistic --

9           Q.     Okay.

10          A.     -- for construction jobs.

11          Q.     All right. Did you discuss -- ever  
12 discuss with Jeff Major establishing a delay claim  
13 against the insurance company?

14          A.     No.

15          Q.     So this e-mail that we looked at at  
16 Encore 12.0166 where on September 29, you are  
17 telling Mr. Major that every week that we get  
18 delayed is going to cost more. And then you use the  
19 word delay again in the next sentence --

20          A.     I'm --

21          Q.     That -- hold on. Let me -- let me finish  
22 my sentence -- that is this -- is this a discussion  
23 with Mr. Major about trying to establish a delay  
24 claim against the insurance company?

25          A.     I'm trying to hold Skyline accountable to

1 make sure they are on top of doing their job.

2 Q. Did you think in relaying this  
3 information to Mr. Major, that it would have been an  
4 important detail to tell him that Encore was working  
5 on getting a license, but did not yet have the  
6 license to start the work?

7 A. It's -- none of that has anything to do  
8 with the e-mail. Again, I am not from Louisiana. I  
9 don't know Louisiana. I know where you are going  
10 with this. And I understand. You know, it makes  
11 sense. But again, like, this is September. Like, I  
12 have other jobs that I'm working on.

13 Like, I am trying to get information  
14 about this specific job to make sure that, you know,  
15 if I can -- when I can start, and if I can start.  
16 And if the owner will have appropriate funding for  
17 that. That's general information that I would, you  
18 know, give to see anybody, subcontractors. You  
19 know, I need this done by Friday.

20 You know, I may say that quite often, you  
21 know. And when in all reality, I'm really counting  
22 on them saying, you know, Friday, they'll show up on  
23 Tuesday or Wednesday or a week later. Again, this  
24 is just a generic. I want to make sure that they  
25 know that I'm on top of my stuff, and they need to

1 get on -- they need to be on top of their stuff.

2 Q. Okay. Let me ask this. Did you prepare  
3 the submissions to the Louisiana licensing board for  
4 the contractor's license, or did somebody else with  
5 Encore handle that?

6 A. I did. I think I did. And Christie may  
7 have.

8 Q. Did the qualifying party have to take a  
9 test?

10 A. Yeah, he had to take a business test.

11 Q. Okay. And do you know when he took that  
12 test?

13 A. Sometime in -- I'm not sure. I could  
14 probably get you that information.

15 Q. Okay. So the date the test was taken,  
16 and then the date the application was submitted?

17 A. Yep.

18 Q. I'll put that on my list.

19 A. Okay. I'll put that on my list.

20 Q. Okay. Let me go back and finish up. We  
21 had started talking about daily logs.

22 A. I do apologize. Just to go back to that  
23 licensing deal. It was -- we had a reciprocity  
24 agreement with North Carolina. That's why he only  
25 had to take that business test.

1 Q. So let me look at some of the dates in  
2 January. And this -- again, this is going to be  
3 Tab G. In January -- this is on Encore 11.04 at the  
4 top, date is January 5, 2021. Let me let you get  
5 there first.

6 A. Could you repeat that? I'm sorry.

7 Q. You're in Tab G? And that's in the first  
8 book.

9 A. Oh, I'm sorry. Okay.

10 Q. All right. This is on Encore 11.04, and  
11 the date of the entry is January 5. It's at the top  
12 of the page. And the entry that I wanted to ask you  
13 about says, removed access overflow concrete on the  
14 window openings from the 2011 remodel. What does  
15 that mean?

16 A. Let me see here. What was this date?

17 Q. January 5.

18 A. Removed excess overflow concrete on the  
19 windows. That is the area where the -- there is  
20 holding cells on the opposite side of that wall. I  
21 do believe that I have photos of it that may be able  
22 to explain a little bit better. There is his  
23 horizontal ribbon window system, that's windows,  
24 then you have a CMU wall that's right behind that.  
25 And that was in the area where the windows were



1 actually pushed in. The frames were pushed in at  
2 the time.

3 So -- and there was a cracked window  
4 on -- the very first or second window on that west  
5 side was cracked. So we had to fix that part, and  
6 also fix that window, which obviously we couldn't  
7 fix it because it -- appropriately because we had to  
8 replace it from the inside. And we couldn't access  
9 that from the inside.

10 Q. Okay. So what is the access overflow  
11 concrete? What is that?

12 A. From the -- the -- whenever they put  
13 cement into the cinderblocks, they had to -- it was  
14 kind of coming out of the sides of the CMU block.

15 Q. And you're saying you had to remove that  
16 access overflow concrete?

17 A. Yes, excess overflow. It was -- it was  
18 to put studs in.

19 Q. Okay. So the word should be excess  
20 overflow concrete?

21 A. Yes. I'm sorry. Excess.

22 Q. Okay. And you had to remove the excess  
23 overflow concrete that was there from the 2011  
24 remodel. Why did you have to remove it?

25 A. Because we were going to put studs in.

1 Q. Okay. And did you put studs in?

2 A. Yes, there's photos.

3 Q. Okay. Look at the --

4 A. Framed that in because we couldn't put  
5 windows back there, because, again, obviously that  
6 CMU wall is there. So we just made a wall.

7 Q. Okay. So go to the entry for January 12.  
8 Are you there?

9 A. Yes.

10 Q. All right. So on this day you've got  
11 eight exterior workers on site from 7:00 a.m. to  
12 6:00 p.m. You set two more windows, you're  
13 performing corrections to WRB, and working on  
14 sheathing to concrete sealant detail. You've got  
15 four insulations on worker on site from 8:00 a.m. to  
16 4:00 p.m. starting sound insulation between rooms on  
17 the first floor. Was that sound insulation between  
18 the rooms on the first floor something that was an  
19 upgrade, or was that there prior to Hurricane Laura?

20 A. That was an upgrade.

21 Q. Okay. And then the rest of the work on  
22 that day, you've got four drywall installers on site  
23 from 8:00 a.m. to 2:00 p.m. preparing for drywall  
24 installation, and you've got two electricians on  
25 site for exterior lighting connections. So what you

1 have done on this particular date, as you did for  
2 the rest of the log, is you note what work is  
3 happening on a particular day, correct?

4 A. Yes.

5 Q. All right. And then go to the January 15  
6 entry.

7 A. Yep.

8 Q. All right. So on this day, you've got  
9 four exterior workers on site, you are working on  
10 flashing details, you have got two workers dedicated  
11 to working on metal break for head flashing, no work  
12 on interiors due to FHO inspections from GSA.  
13 Inspection went well. No issues were brought up  
14 about exterior details, and no water infiltration  
15 was present. So on this particular day, GSA was  
16 doing an inspection of their space on the first  
17 floor?

18 A. Yeah, I don't know what they were -- what  
19 they were doing. There was -- is it HOA that I --  
20 hold on.

21 Q. HO.

22 A. Yes. Yeah, that was -- that was their  
23 inspectors. I think that was on a -- even on a  
24 Friday or Thursday. Yes, I remember this.

25 Q. Were you present?

1 A. For half of it, yes.

2 Q. And according to your notes, it went  
3 well, correct?

4 A. Yes.

5 Q. Look at the entry for January 22. It  
6 says.

7 No exterior work due to rain.  
8 January 25, no work on exterior due to rain. And  
9 January 29, six exterior guys on site for half day  
10 due to rain.

11 So you would note when you had -- that  
12 affected or impacted the work, correct?

13 A. Can you repeat that, please?

14 Q. You -- in your daily logs, you kept track  
15 of weather delays, correct?

16 A. Yes.

17 Q. When you had any kind of delays like this  
18 caused by weather, or any other event, did you --  
19 and I haven't seen this, this is why I'm asking --  
20 did you ever put in for a change order request for  
21 an extension of the contract time?

22 A. No.

23 Q. Why not?

24 A. I'm not sure. I don't know why. Because  
25 I mean, I was, you know, kind of comparing things to

1 the -- to a budget. I mean, I wasn't there yet. So  
2 I may not have had to, if I'm still at a decent  
3 budget, then, I mean, I'm not going to submit  
4 anything. Again, and that's why there are times  
5 that I do add those contingencies in there to make  
6 it that -- make up for.

7 Q. Okay. When you're talking about budget,  
8 are you talking about a monetary budget, or a time  
9 budget?

10 A. Just, you know, just seeing what I've got  
11 in my estimate for any specific item, and kind of  
12 see where I'm at.

13 Q. Are you familiar with the concept that,  
14 if a contractor has a contract in place for a  
15 specific price, and to meet a specific deadline, and  
16 the contractor feels that they are entitled to an  
17 extra cost or more time, they can use a change order  
18 to request that; is that right?

19 A. Correct.

20 Q. Right. And so I see you -- I see you  
21 putting in change orders for additional costs, like  
22 with Hurricane Delta, and with the changes to the  
23 HVAC system. And I saw a request for an extension  
24 of time based on HVAC. But that's the only request  
25 for extension of time that you asked for through a

1 change order, correct?

2 A. Right. Because, again, I was still  
3 within budget.

4 Q. Within time budget you're talking about?

5 A. With my -- with my estimate budget.

6 Q. So you're talking about money?

7 A. Of man hours for myself.

8 Q. Okay. You're using the word budget, and  
9 I'm just talking about, you have a deadline in your  
10 contract to meet for final completion, right?

11 A. Yes. And that was based upon Path A.

12 Q. Okay. And I'm talking about in general  
13 now. You were aware that you could seek an  
14 extension of the contract time, if something  
15 happened outside of your control, correct?

16 A. That is correct.

17 Q. But you didn't. The only change order  
18 you asked for for an extension of time was for the  
19 additional HVAC work, correct?

20 A. Yes. So I'm going to go back to this.  
21 During the beginning, and all these items, I mean,  
22 in the background, you know. Joey Odom is a guy  
23 that -- and him and I -- him and I had conversations  
24 about it. We wouldn't need a contract with him. We  
25 wouldn't -- you know, if he's satisfied, and if

1 you're doing the work that you are supposed to do,  
2 he's paying you.

3           Probably one of the better clients that I  
4 have had. I am directly across the hall from him.  
5 Okay. I would just go over say, hey, Joey this is  
6 where we're at today. And this is what we have got.  
7 This is where, you know, where I'm having issues  
8 with. But again, he was -- he was very well aware  
9 of the path that we went off of, and the path that  
10 we were currently on.

11           And again, if he had any questions, he  
12 would just walk 10 feet over to my office and say,  
13 hey, you know, what can we do? And where are we at?  
14 Again, it's just a, you know, just conversations.  
15 It wasn't like I was 10 miles away at another  
16 office. I mean, I saw him every single day.

17           Q.     So are you saying that the reason why you  
18 didn't submit contract -- change order requests for  
19 an extension of the contract time was because you  
20 were having these informal discussions with  
21 Mr. Odom, and you didn't feel like you had to have a  
22 signed change to the contract? Is that what --

23           A.     No, we didn't have to have -- I didn't  
24 have to have a signed contract with him. You know,  
25 if I -- if he knew -- I was -- I was transparent

1 with Joey Odom from day one, with my estimates, with  
2 my contingencies. I showed him the estimate. I  
3 showed him items, you know, even talking with the  
4 subcontractors where I started with them and where I  
5 ended with them.

6           You know, we were, you know, 15,000 or  
7 10,000 dollars cheaper on drywall than Xactimate  
8 was. We were \$15,000 cheaper than painting was than  
9 Xactimate prices. Panels are going to be more  
10 expenses. Again, you know, he knew the  
11 contingencies. He knew of every single thing. It  
12 was a very transparent deal. And if he need proof,  
13 hey, this is what it looks like.

14           So again, as much as informal, and in  
15 lawyer discussions, you don't like informal. But he  
16 is a good guy. I was right across the door from  
17 him. And he had all the faith in me to do this.  
18 And I had all the faith in him that, you know, if we  
19 didn't even have a signed contract, he would pay me.  
20 That's what he would do, because that's -- he's just  
21 a wholesome guy. So again, there's informal and  
22 formal things in this.

23           And I want to make sure that it's clear  
24 that none of it had to be formal with him, because  
25 he just took it. And he trusted what we were doing.



1 And I trusted him, that, hey, you know, I may not  
2 have to send you an invoice on this date at this  
3 time. But I'm going to send you an invoice, and  
4 you're going to pay for it. And he was -- he'd be  
5 fully 110 percent fine with it. So, yes, it was an  
6 informal.

7 I went in there, we had discussions.  
8 Because none of this -- this whole thing was not  
9 formal from the time I gave submittals. And from  
10 the time that we were having discussions with  
11 Skyline and Joey, Skyline stating that we would  
12 have -- there's no way that they're going to pay,  
13 that they are not going to pay. There is no way  
14 possible that they are not going to pay.

15 That's why I was there. And so again,  
16 going -- all these conversations and all these  
17 informal things, I keep logs for my company so that  
18 they have -- if I'm gone, then somebody can step in,  
19 they could have some sort of knowledge. And I do it  
20 also is a personal thing so that they know what they  
21 are walking into. So, yeah, there are some of these  
22 deals where you -- I mean, we were late, but Joey  
23 knew where we were at every single way.

24 Q. So let me ask you this. In all of your  
25 informal discussions with Mr. Odom, when did you

1 tell him you were going to submit these pay  
2 applications that you are holding back on?

3 A. I'm not -- again, I'm not holding -- I  
4 haven't had that discussion with him. I just -- I  
5 have not given him an -- he knows that -- that he's  
6 going to have these invoices. I am actually still  
7 working on some of the items, as far as the windows  
8 and trying to see if there is, you know, leftovers.

9 How much exactly is left over in that  
10 window estimate that I got on, you know, that I was  
11 planning on doing. How much money I've got left  
12 over. So again, like, I don't know exactly what the  
13 final invoice would be, because there's work on that  
14 that we didn't do. And so I wouldn't know those  
15 exact numbers.

16 Q. But you do have that one invoice where  
17 you had done the \$200,000 worth from June, and  
18 haven't submitted that that? And you're --

19 A. Again, but it's not -- it's not finished.  
20 I haven't finished the invoice. So it's labeled --  
21 it's labeled wrong. It's in the 06 folder, the  
22 project folder that you guys have. That's what it's  
23 labeled as. So, you know, if you think that I'm  
24 holding that because I'm not going to invoice, you  
25 would be completely wrong.

1 Q. Is there any --

2 A. -- like that's where you're getting at  
3 with it. And again, like, you know, sometimes it's  
4 easier just to ask the question.

5 Q. I would prefer it if you would answer my  
6 question, rather than trying to think of where I'm  
7 going with it.

8 Is there any outstanding amount right now  
9 that the owner owns Encore or that --

10 A. That he -- yes, there is 130 something  
11 thousand, I think, that he owes.

12 Q. So he owes --

13 A. He didn't pay my full invoice.

14 Q. So the owner owes about \$130,000?

15 A. Yes. Whatever the 500,000 -- 550 that he  
16 paid us. And if you add the two, the 05 and 04  
17 invoice together. Again, I'm not exactly sure what  
18 that -- that cost would be.

19 Q. Are you charging the owner every month  
20 the .06 percent interest that the contract calls  
21 for?

22 A. Yes.

23 Q. And he knows that?

24 A. Yes.

25 Q. Do you know why he hasn't paid?

1           A.     I don't know his financial situation, so  
2 I don't know.

3           Q.     He hasn't told you how much the insurance  
4 company gave him?

5           A.     I know that, yes.

6           Q.     So he did tell you?

7           A.     I don't know his financial situation.

8           Q.     Did he tell you how much money -- when  
9 insurance checks would come in, did he tell you that  
10 the insurance company had paid, and how much?

11          A.     I would know what the insurance paid,  
12 yes.

13          Q.     Okay. And you recall that I asked you  
14 whether or not there were any other invoices. The  
15 only invoice we have shows two interest payments on  
16 the 315,000 for two months. So there -- I think  
17 what you told me was, that's it, that's the only  
18 interest you're looking for from the owner is what's  
19 shown in those invoices; is that correct?

20          A.     No, you misstated what I said.

21          Q.     Okay. Tell me -- the invoice --

22          A.     I mean, since I have invoiced so far,  
23 that's what -- that's the only interest on the  
24 invoices at that point in time. Every day that goes  
25 past -- or every month that goes past that 30 days,

1 then he owes 6 -- .6 percent, or whatever it was on  
2 the deal, you know, for every 30 days. So I mean,  
3 the leftover money that he's got right now, you  
4 know, that he owes, he would be paying .6 percent  
5 interest on.

6 Q. Okay. Let's go back to the daily logs,  
7 see if we can finish this up. If you look in  
8 February. February 15 through the 24th appear to  
9 be weather delays from a winter storm where there  
10 was a complete stoppage of work. I just want to see  
11 if I've got that right. Look at the entry for  
12 February 15. It says, no work due to weather, no  
13 power, no Internet, no water. And then it says,  
14 delayed tile delivery, exterior component delivery  
15 is delayed. Correct? That's the entry --

16 A. Yes.

17 Q. All right. And on the 16th, February 16,  
18 and again, I'm reading from Encore 11.03. The entry  
19 is, no work due to weather, power was -- it says  
20 one, but I think that might be on -- from 11:00 a.m.  
21 from 8:00 a.m. to 11:00 p.m. Is that power was out,  
22 or power was on, from 8:00 a.m. to 11:00 p.m.?

23 A. Yeah, I think it was on in the morning.

24 Q. Well this is 8:00 a.m. to 11:00 p.m. So  
25 that would be into the night. You think you meant

1 to write on?

2 A. Yes. Yes. Yes.

3 Q. No running water, still no contact with  
4 suppliers out of Houston or Dallas. If you keep  
5 reading it says, but the current status of delivery  
6 is unknown, ceiling tiles will not be delivered as  
7 scheduled. And then on February 17, it says no work  
8 due to weather. We still do not have consistent  
9 power at the building. Still no running water.

10 Then if you go to February 18, it says,  
11 no work due to lack of consistent power supply.  
12 Still no running water. And you can read more about  
13 freezing temps, and rain, and delays on ceiling tile  
14 deliveries. That's what your entry is for the 18th,  
15 correct, you are documenting that?

16 A. Yep.

17 Q. Yes?

18 A. Yes.

19 Q. All right. And on the 19th of February,  
20 you have a supply update. Received soft date on  
21 ceiling tiles of February 26. Delayed ten days from  
22 expected date due to storm, et cetera. I don't -- I  
23 don't think we need to read all of this into the  
24 record. And then on the 24th of February, it says  
25 work resumes after storm, correct?

1 A. Yes.

2 Q. So based on this entry from February 15  
3 through February 24, it looks like it was almost a  
4 complete shutdown, or a complete work stoppage  
5 because of this winter storm?

6 A. Correct.

7 Q. And then, of course, that -- after the  
8 storm delayed delivery of some the items that you  
9 have been waiting for, correct?

10 A. Correct.

11 Q. Other than the entries that you have in  
12 your daily logs where you note impacts or delays,  
13 did you track any specific number of days past the  
14 contract completion date caused by any of these  
15 things?

16 A. Yeah. I may -- I may have just in  
17 e-mails over to GSA. But no, not in, like, any  
18 informal -- or informal as far as my logs.

19 Q. Well what I want to know is, did you do  
20 an actual -- when the project was over at any point,  
21 figure out an actual causation, number of days of  
22 delay, meaning past the contract completion date,  
23 caused by weather, number of days past contract  
24 completion caused by labor shortage, number of days  
25 caused by any funding issues? Did you break it up

1 like that, say you can assign X days to any  
2 particular cause?

3 A. No.

4 Q. You didn't do that. And to date, you  
5 have not done; is that right?

6 A. Correct.

7 Q. And nobody has asked you to do that?

8 A. No.

9 Q. Right. You've not been asked to testify  
10 at trial about how many days of delay was caused by  
11 any particular impact or delay; is that right?

12 MR. COX: Object. That's a not a  
13 question he can answer. He doesn't know  
14 what we're going to ask him at trial.

15 MS. WOLF: I'm asking if he's been  
16 engaged to do that, to give that testimony  
17 at this point --

18 MR. COX: He has not been engaged by  
19 us. I don't know if he's been engaged by  
20 a nonparty. I guess, he can't have been  
21 engaged by you guys. But he's a fact  
22 witness.

23 MS. WOLF: Right.

24 BY MS. WOLF:

25 Q. And so, that's what I'm asking you about



1 are facts. As of today, you have already testified  
2 that you have done no calculation to say the number  
3 of days past contract completion associated with any  
4 particular cause, right? You have not done that  
5 calculation?

6 A. Correct.

7 Q. There's nothing in your documents, and  
8 nothing in your head right now, where if somebody  
9 asked you, how many days past the contract  
10 completion date did you go because of a weather  
11 delay, or labor shortage, or funding issue, you do  
12 not have that answer, correct?

13 A. I've probably got an approximate amount.  
14 But, I mean, again, after December, I mean,  
15 everything -- everything was on another path. So it  
16 doesn't -- so it doesn't -- I kept track of -- you  
17 could probably add this stuff up, as far as rain  
18 delays. But again, so I don't -- anything that's  
19 happened from the original time that we were looking  
20 at finishing to now, no, I have not.

21 Q. Okay. And you're aware -- you know what  
22 the word concurrent delay means? You've heard of  
23 that term?

24 A. Could you define it for me, please?

25 Q. I'm asking you if know --

1 A. No, I do not.

2 Q. Okay. All right. That's all the  
3 questions I have about that. So let's look at --  
4 let's look at February 22. Actually, I'm sorry,  
5 start with February 17.

6 A. Hold on one second. February 17.

7 Q. February 17.

8 A. Yes.

9 Q. All right. So if you go over it says,  
10 Wade with IRC stopped by to work on the broken AHU.  
11 So that's -- Wade is with Industrial Refrigeration,  
12 correct?

13 A. Yes.

14 Q. And he stopped by because the air  
15 handling units were broken, right?

16 A. Yes. That is in the log. But it's a  
17 long story about that, the AHU, the air handling  
18 units, but continue.

19 Q. Okay. So it says they cannot be fixed  
20 due to regulations?

21 A. Correct.

22 Q. -- to be replaced. So in a nutshell,  
23 what does that mean?

24 A. They are R22 refrigerant.

25 Q. So because of code regulations, they had

1 to be upgraded?

2 A. They could not be fixed.

3 Q. Okay. So they had to be replaced?

4 A. Yes.

5 Q. All right. And then go to -- go to the  
6 entry for February 22. It says, owner working on  
7 financial. He has approved of full phase one  
8 installation of VRF. Is that a reference to the  
9 owner approving the HVAC replacement work on the  
10 first floor?

11 A. It could. I'm not quite sure. I would  
12 guess, because I would have witnessed -- or I would  
13 have said Wade. But, yeah, he has approved a full  
14 phase installation of VRF.

15 Q. So on or about that date, because you  
16 have it in your log, is when the owner approved the  
17 work to replace the HVAC system on the first floor,  
18 correct?

19 A. Part of the HVAC system on the first  
20 floor.

21 Q. Okay. Is it correct to say that the  
22 first floor tenant cannot move in and occupy the  
23 first floor until they have air conditioning?

24 A. They did have air conditioning. They  
25 just got -- each -- each office got ceiling

1 cassettes. But again, the entire office is still  
2 operating on the old system. It's just there are  
3 certain rooms that we have selected for the VRF  
4 system to go into.

5 Q. On the first floor?

6 A. Yes, ma'am.

7 Q. Okay. So part -- you're saying that part  
8 of the HVAC system on the first floor was replaced  
9 or upgraded, not the entire thing?

10 A. The main corridor are still ran by the  
11 main unit. The individual -- the center offices are  
12 still ran off of the main unit. A couple -- I think  
13 the conference room, and again, a couple of other  
14 offices are ran off of the main system.

15 Q. When GSA moved back into the first floor,  
16 had all the HVAC work that was being done on the  
17 first floor been completed?

18 A. No.

19 Q. So when they moved in, there was still  
20 work to be done?

21 A. There is still work to be done. And that  
22 would be phase two of the HVAC.

23 Q. Okay. So all the work that had been  
24 approved and designed at that point had been done  
25 before they moved in?

1 A. Phase one of it, yes.

2 Q. Okay. Phase two, as of right now, has  
3 not been approved?

4 A. It has been approved, it just has not  
5 been completed yet.

6 Q. Okay.

7 MS. WOLF: Can we take about a five  
8 minute break, come back in a couple  
9 minutes after 2:00?

10 MR. COX: Sure.

11 MS. WOLF: Thank you.

12 THE VIDEOGRAPHER: Going off the  
13 record. The time is 1:58.

14 (OFF THE RECORD)

15 THE VIDEOGRAPHER: We are now on the  
16 record. The time is 2:07.

17 BY MS. WOLF:

18 Q. All right. Mr. Monheiser -- I'm sorry if  
19 I'm saying your name wrong. I hear the way you're  
20 saying it.

21 A. You can just call me Evan. If that's  
22 okay, you can just call me Evan.

23 Q. Tell me one more time how you say your  
24 last name?

25 A. Monheiser.

1 Q. Okay. I don't think I --

2 A. -- make that Meheiser.

3 Q. If we go to the March entries for the  
4 daily log, I have a few questions for you there.

5 A. March?

6 Q. So we're going to be on Encore 11.02  
7 starting down the bottom of the page with the  
8 March 1 entry. And actually what I'm going to do,  
9 is just ask you to verify that you have entered in  
10 on these particular days that there were rain  
11 delays. On March 1, you say no exterior work due to  
12 rain, correct?

13 A. Correct.

14 Q. March 4, the same. March 5, the same.  
15 March 19, no exterior work due to rain, no interior  
16 work. And on the 23rd, no exterior work in the  
17 morning due to heavy rain last night. All those  
18 were correct dates?

19 A. Yes, for exterior work. And then -- yes,  
20 for exterior work.

21 Q. Okay. And on March 19th where you  
22 wrote no interior work, are you saying that's not  
23 related to the rain event, that's something else?

24 A. I was just naming that those are the  
25 dates -- all those dates that you named, the one